

The International Comparative Legal Guide to:  
**Class and Group Actions 2009**

A practical insight to cross-border Class and Group Actions work



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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.

Italian law provides for two procedural devices for handling claims common to a class of individuals, which are only available in the context of consumer disputes: (i) collective actions for damages (Article 140-*bis* of the Consumer Code); and (ii) representative actions for injunctive relief (Articles 139 and 140 of the Consumer Code).

Both actions are "representative", since standing is granted only upon certain representative bodies. However, such actions differ in several respects. Accordingly, this Section 1 focuses on collective actions for damages, while Section 2 below focuses on representative actions for injunctive relief.

Collective actions for damages were introduced in Article 140-*bis* of the Consumer Code ("Article 140-*bis*") last year (following enactment of Law 12.24.2007 No. 244). This provision was promulgated after nearly two years of debate regarding the costs and benefits of introducing into the Italian legal system a procedural device bearing some resemblances to US-style class actions. The new provision is now scheduled to become effective - possibly with amendments (question 9.2 below) - on January 1, 2009, but would at least arguably also cover causes of action arising before that date, provided that the action is commenced within the applicable statute of limitations.

Specifically, certain consumer associations and committees are granted standing to sue enterprises for damages on behalf of individual injured parties in cases where a "*multitude of consumers*" have been affected (question 1.7 below). A two-stage procedure is contemplated: an initial, judicial phase, to establish the liability of the defendant enterprise in connection with the allegations of the plaintiff representative body; and a subsequent, "non-contentious" phase, for the quantification of damages due to individual consumers who have elected to opt into the proceedings or otherwise intervene therein (question 1.4 below).

The application for a collective action for damages should normally be filed with the court of the place where the defendant enterprise has its registered office.

At the preliminary stage of the judicial phase, the court must establish whether the action is maintainable. Pursuant to Article 140-*bis*, third paragraph, a collective action for damages can not be maintained if: (i) *prima facie*, it is "*manifestly groundless*"; (ii) a conflict of interest exists between the plaintiff representative body and the consumers whose interests it purports to protect; or (iii) the dispute does not relate to issues of fact or law that are common to a multitude of consumers.

Pursuant to Article 140-*bis*, fifth paragraph, any judgment of liability rendered on the plaintiff representative body's claim at the conclusion of the judicial phase is binding upon the defendant enterprise, the plaintiff representative body, and any consumers who opted into the proceedings. Intervenors may file their own claims directly against the defendant enterprise. These claims will be assessed independently from the plaintiff representative body's claim (question 1.3 below).

If the court finds the defendant enterprise liable, it must then define the general criteria to be used in determining the amount due to each consumer and, if this is possible in light of the available evidence, indicate the minimum of such amount (Article 140-*bis*, fourth paragraph). The actual quantification of damages due to each consumer will be addressed in the context of the second, "non-contentious" phase, which commences following notification of the judgment establishing liability.

Specifically, within 60 days of notification of the judgment, the defendant enterprise is required to propose a settlement amount to each consumer having opted into, or having intervened in, the proceedings. Within the 60-day period following this proposal, each consumer may accept the defendant's proposal, in which case that settlement will become enforceable against the defendant enterprise (Article 140-*bis*, fourth paragraph).

Pursuant to Article 140-*bis*, sixth paragraph, consumers who have not accepted the defendant's proposal are entitled to request the quantification of damages in a subsequent conciliation procedure that can be initiated either by the plaintiff representative body or by the defendant enterprise. The same procedure applies in the event that the defendant enterprise fails to make a settlement proposal in a timely manner.

Depending upon the parties' agreement, the conciliation procedure may be either *ad hoc* or institutional.

In the event of *ad hoc* conciliation, the defendant enterprise and the plaintiff representative body will each appoint a conciliator, while the court will appoint a third conciliator to act as chairman of the panel. All three conciliators are required to be attorneys.

Alternatively, the parties may agree to refer the quantification of damages or restitution to one of the conciliation institutions registered with the Ministry of Justice, which will act in accordance with its own internal rules. An updated list of these bodies is available on the Internet website of the Italian Ministry of Justice ([http://www.giustizia.it/ministero/struttura/dipartimenti/elenco\\_conciliatori.htm](http://www.giustizia.it/ministero/struttura/dipartimenti/elenco_conciliatori.htm)).

The conciliators' determination is binding upon the defendant enterprise and the consumers who, having opted in or intervened, specifically elected to take part in the conciliation procedure.

- 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.**

Article 140-*bis* applies only to consumer disputes. Article 3, first paragraph, letter a), of the Consumer Code defines a consumer as "an individual who is acting for purposes falling outside his trade, business or profession". In the context of consumer disputes, pursuant to Article 140-*bis*, first paragraph, collective actions for damages may be initiated to pursue allegations of:

- (i) wrongdoing in the context of legal relationships relating to contracts entered into by consumers by executing standard forms prepared unilaterally by the defendant enterprise;
- (ii) torts, including securities and product liability cases;
- (iii) commercial practices contrary to professional diligence, which materially distort or are likely to materially distort the economic behaviour of consumers with regard to product selection (e.g., commercial practices listed in Legislative Decree 8.2.2007 No. 146); and
- (iv) anti-competitive activities, such as agreements between enterprises that restrict competition, as well as abuses of a dominant position covered by Articles 2 and 3 of Law 10.10.1990 No. 287 and Articles 81 and 82 of the EC Treaty.

- 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?**

Any consumer having a claim for damages related to the representative body's claim is entitled to opt into, or intervene in, the proceedings.

Consumers opting in do not become full-fledged parties to the proceedings. Their claim is the representative body's claim, and the resulting judgment will be binding upon them (Article 140-*bis*, fifth paragraph).

In contrast, intervenors become parties to the proceedings in their own right and are entitled to file autonomous related claims directly against the defendant enterprise. The decision regarding the representative body's claim, therefore, would not automatically bind any such intervenor, whose claims would be assessed separately on their merits.

- 1.4 Is the procedure "opt-in" or "opt-out"?**

The procedure is based on an opt-in mechanism. Consumers may opt into the action, at any time during the first instance proceedings or on appeal (Article 140-*bis*, second paragraph), by means of a simple letter or other written communication sent to the representative body promoting the action.

Article 140-*bis* also gives interested consumers the option to intervene in the proceedings by making their own related claims against the defendant enterprise, thereby allowing them to exercise other procedural rights to which parties to litigation are normally entitled (e.g., submitting briefs and requesting admission of evidence). Intervention is allowed in first instance proceedings, until the last hearing that precedes rendition of the judgment (Article 268, first paragraph, of the Code of Civil Procedure).

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

A collective action for damages must involve the interests of a "multitude of consumers". Article 140-*bis* does not specify how many consumers are required to be involved in the suit in order to constitute a "multitude". In light of the rationale underlying the new law (i.e., facilitating the bringing of claims affecting a large number of potential claimants in the context of a single dispute), it would be reasonable to expect that courts will set a fairly high standard in this regard, rejecting collective actions that involve only a relatively small number of individuals.

- 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?**

For a collective action to be maintained, common issues of fact or law must underlie the claims of interested consumers. In cases in which entitlement to damages requires resolving issues of fact or law specific to each consumer, courts should in principle not recognise the existence of common issues of fact and law and should therefore dismiss the suit.

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

Collective actions for damages may be brought by any of the 16 associations of consumers currently registered with the Ministry for Economic Development (for an updated list, see Ministerial Decree of 2.14.2008, available at <http://www.altalex.com/index.php?idnot=1357>). Registration requires that the association fulfil a number of conditions set forth in Article 137 of the Consumer Code, including requirements related to the association's national dimension and representativeness.

Non-registered associations and ad hoc committees may also bring collective actions for damages, provided that the court finds these bodies to be "adequately representative of the collective interests that they seek to protect" (Article 140-*bis*, second paragraph). Case law developed in other contexts suggests that, in attempting to determine the representativeness of a non-registered association, courts should consider its business purpose, participation in public organisations (such as the National Council of Consumers), and the number of its members and registered offices. Unlike associations, *ad hoc* committees are not required to have a business purpose or office, or to participate in public organisations, as long as they collect funds for a selfless purpose announced by the committee's promoters (Article 39 of the Civil Code). Accordingly, recognition of a committee as "adequately representative" is likely to hinge on the nature of the objectives that it seeks to achieve, the number of its members and the number of non-members contributing to the committee's fund.

- 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?**

If a court decides that a collective action is maintainable (question 1.1 above), it will order the plaintiff representative body to "adequately publicise" the action to the public, at its own expense, so as to allow interested consumers to opt-in or intervene (Article 140-*bis*, third paragraph). Since the new rules have not yet become effective, there is so far no case law on this point.

**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.

Not applicable. Article 140-*bis* will enter into effect only on January 1, 2009 (question 1.1 above).

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

The remedy available in the context of collective actions for damages is monetary compensation.

In addition, under general rules of Italian civil procedure, a party to a suit may request interim injunctive relief to protect the rights that are the subject matter of his claim until the court renders a decision on the merits. Insofar as Article 140-*bis* is silent, a plaintiff representative body might argue that it has standing to request interim injunctive relief against the defendant enterprise in the context of a collective action (e.g., a plaintiff representative body might request interim injunctive relief, pursuant to Article 700 of the Code of Civil Procedure, aimed at avoiding additional or further damages resulting from an alleged tort).

Permanent injunctions are only available in the context of representative actions for injunctive relief (Section 2 below).

## 2 Actions by Representative Bodies

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

As noted in question 1.1 above, only certain representative organisations have standing to commence collective actions for damages. The same rule applies to representative actions for injunctive relief, even though the bodies having standing to commence such actions differ from those that may initiate collective actions for damages (question 2.2 below).

**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?

Pursuant to Articles 139 and 140 of the Consumer Code, representative actions for injunctive relief may be brought by the 16 associations of consumers which also have standing to commence collective actions for damages (question 1.7 above) as well as by other independent public bodies established in other Member States of the EU and Italian professional associations and chambers of commerce, which do not have standing to commence collective actions for damages.

Unlike collective actions for damages, consumers are not allowed to either opt into the representative action for injunctive relief or otherwise intervene therein.

**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.

Representative actions for injunctive relief may be commenced, in the context of consumer disputes, to:

- (i) order the cessation of the use of unfair terms in consumer contracts (Article 37 of the Consumer Code), i.e., terms that "cause a significant imbalance in the parties' rights and obligations, to the detriment of consumers" (Article 33 of the Consumer Code);
- (ii) "order the cessation of behaviour contrary to the interests of consumers", namely, behaviour (see Articles 139, first paragraph, and 140, first paragraph, letter a), of the Consumer Code) constituting a violation of: (a) the provisions of the Consumer Code; (b) the "fundamental rights" of consumers, as set forth in Article 2 of the Consumer Code (e.g., protection of health; security and quality of products and services; et al); or (c) statutory provisions relating to broadcasting activities and advertising of pharmaceuticals (Law 12.30.1992 No. 541 and Law 10.14.1999 No. 362);
- (iii) "implement measures aimed at reducing or eliminating the harmful effects" of violations described in subparagraph (ii) above (Article 140, first paragraph, letter b), of the Consumer Code); and
- (iv) "order the publication in one or more national or local newspapers of any judgments or orders" obtained pursuant to subparagraphs (i), (ii) or (iii) above (Article 37, third paragraph, and Article 140, first paragraph, letter c), of the Consumer Code).

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

Permanent injunctive relief is the only remedy available in the context of representative actions for injunctive relief.

## 3 Court Procedures

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

Pursuant to Article 50-*bis*, first paragraph, number 7-*bis*, of the Code of Civil Procedure, collective actions for damages (Section 1 above) are tried by a single judge and decided by a three-judge panel, while representative actions for injunctive relief (Section 2 above) are both tried and decided by a single judge.

**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?

No specialist judges are appointed in either collective actions for damages or representative actions for injunctive relief.

**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?

In the context of collective actions for damages, the class is defined based on an opt-in mechanism. In addition, interested consumers might intervene in the proceedings (question 1.4 above). Representative actions for injunctive relief do not contemplate participation of single consumers in the proceedings and, therefore, there is no class definition (question 2.2 above).

**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?**

Italian courts do not normally select "test" or "model" cases, among other reasons because the rule of *stare decisis* does not apply in the Italian legal system.

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

No, but some may be developed based on procedural devices contemplated in the Code of Civil Procedure in the context of joint actions (e.g., separate individual actions filed by a multitude of individuals before the same court). These include devices such as separation of suits (Article 103), consolidation of related suits (Articles 273 and 274), and stay of proceedings in parallel suits (Article 295).

**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?**

Pursuant to Articles 61 and 191 of the Code of Civil Procedure, the court may appoint an expert to assist it in considering technical issues. If the court appoints an expert, the parties may appoint their own experts.

**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?**

Italian civil procedure does not contemplate pre-trial depositions.

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

Italian civil procedure does not contemplate documentary discovery, nor are parties to civil proceedings obliged, per se, to disclose any documentary evidence relating to the dispute.

Nevertheless, pursuant to Articles 118 and 210 of the Code of Civil Procedure, the judge may order the parties to the litigation or other third parties, as the case may be, to exhibit documentary evidence that is "*necessary to understand the facts of the case, as long as such exhibition does not cause serious harm to the requested party, and the compliance thereof does not amount to a violation of a secret*" - such as legal or other professional privilege, state secrets and secrets that a public officer has acquired by virtue of his office (Articles 200, 201 and 202 of the Code of Criminal Procedure) - and provided that the requesting party identifies the requested documents.

The court may only draw adverse inferences against a party that refuses to comply with such an order to exhibit documents (Articles 116 and 118 of the Code of Civil Procedure).

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

Not applicable in the context of collective actions for damages. Article 140-bis will enter into effect only on January 1, 2009

(question 1.1 above).

In representative actions for injunctive relief, the pre-trial phase normally takes six to twelve months because of the need to comply with certain procedural requirements and attend preliminary hearings. The length of the pre-trial phase will depend mostly on the case distribution schedule of the court seized of the action.

**3.10 What appeal options are available?**

Judgments rendered in the context of collective actions for damages and representative actions for injunctive relief may be appealed before court of appeals and, subsequently, in certain limited cases (e.g., errors of law), before the Supreme Court. Standing to appeal is granted only to those who were parties to the proceedings (i.e., the plaintiff representative body and, in the context of collective actions for damages, consumers that intervened in the proceedings).

## 4 Time Limits

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

Under the general statute of limitations in Italian law (Articles 2946 and 2947 of the Civil Code), civil proceedings must normally be brought within 5 years of the commission of the tortious act or within 10 years of the contractual breach giving rise to the claimant's right to compensation for damages.

Collective actions for damages and representative actions for injunctive relief are deemed to have been brought when the plaintiff representative body serves the statement of the case on the defendant enterprise.

The statute of limitation may be tolled by sending a letter of complaint to the prospective defendant (Article 2943, fourth paragraph, of the Civil Code).

**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 a discretion to disapply time limits?**

The age or other personal conditions of the claimant do not affect calculation of time limits, and Italian courts do not have any discretion to waive time limits.

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

The statute of limitations starts to run when the claimant has knowledge, or could have reasonably had knowledge, of the facts constituting his cause of action. Therefore, concealment of facts or fraud affecting the claimant's knowledge would normally prevent the statute of limitations from beginning to run.

## 5 Remedies

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

In general, the claimant is entitled to recover all economic damages, including economic losses, insofar as they are "*an immediate and direct consequence*" of the alleged unlawful conduct (Article 1223

of the Civil Code).

Specifically, in contractual disputes, the claimant is entitled to recover only those damages that could have reasonably been expected to arise from the defendant's breach at the time the contract was executed (Article 1225 of the Civil Code), unless the claimant shows that the defendant's breach was intentional. In tort cases, in addition to the recovery of economic losses, the claimant is entitled to recover so-called "moral", non-economic, damages, if the act or omission giving rise to the civil claim constitutes a criminal offence (Article 2059 of the Civil Code). Generally, courts quantify "moral" damages on an equitable basis.

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**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?**

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Costs associated with medical monitoring in circumstances in which the product in question has not yet malfunctioned or caused any damage would normally not be considered recoverable damages.

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

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In the Italian legal system, damages have a compensatory function. Punitive damages are not recoverable.

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**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?**

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There is no monetary cap on damages recoverable from a defendant.

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

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In collective actions for damages, damages are quantified in the context of the "non-contentious" phase of the procedure (question 1.1 above), based on the criteria set forth by the court in the liability judgment.

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

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Article 140-*bis* does not lay down any special rules applicable to settlement of claims in the context of collective actions for damages, nor is court approval required. In order to be bound to any settlement entered into by the plaintiff representative body, consumers opting into the action must consent to it.

## 6 Costs

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**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?**

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The general "loser pays" rule, provided for under Article 91 of the Code of Civil Procedure, applies to both collective actions for damages and representative actions for injunctive relief.

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**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?**

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Generally, the plaintiff representative body would bear the litigation costs relating to a collective action for damages or a representative action for injunctive relief.

Consumers intervening in a collective action for damages would bear their own litigation costs.

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**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?**

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A discontinuation of the claim brought by the plaintiff representative body or other consumers intervening in the proceedings would normally require the defendant's consent. Such consent would normally be conditional, *inter alia*, upon the discontinuing party paying the defendant's litigation costs.

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**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?**

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Courts normally assess litigation costs and other incidental expenses at the end of the proceedings, based on criteria and caps set forth by the "national forensic tariff" (*tariffario forense*) (Ministerial Decree 4.8.2004 No. 127).

## 7 Funding

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

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Public funding (*gratuito patrocinio*) is available under Italian law in the context of any civil litigation.

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

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Public funding is available to Italian not-for-profit organisations and low-income individuals, provided that the relevant claim or defence "*is not manifestly groundless*" (Articles 74, 76 and 119 of Presidential Decree 5.30.2002 No. 115). Public funding covers 100% of the attorneys' fees and other incidental litigation expenses. There is no reported case in which public funding has been used in the context of representative actions for injunctive relief.

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

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Italy legalised contingency fees in 2006 (Article 2 of Law Decree 7.4.2006 No. 223, enacted by Law 8.4.2006 No. 248). As a result, attorneys and their clients may now agree, in writing, that: (i) the attorneys' fees be set as a percentage of the amount awarded to the client at the end of the lawsuit; and (ii) no attorneys' fees be requested to be paid if the lawsuit is lost.

The Italian Bar Association (*Consiglio Nazionale Forense*) has recently cautioned that contingent fees should always be proportionate to the work actually carried out by the attorney ([see: http://www.altalex.com/index.php?idnot=1965](http://www.altalex.com/index.php?idnot=1965)).

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

Third party funding of claims is not prohibited.

## 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.**

Assignment of consumer claims to consumer associations or other representative bodies is not prohibited.

**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.**

There are no provisions prohibiting the sale of consumer claims to professional commercial claimants. However, professional commercial claimants would not have standing to file collective actions for damages or representative actions for injunctive relief (questions 1.7 and 2.2 above).

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

In general, Article 74 of the Code of Criminal Procedure allows "piggy-back" civil claims to be brought insofar as the civil claim stems from facts that constitute the subject matter of the criminal proceedings. However, collective actions for damages and representative actions for injunctive relief may not be commenced in the context of criminal proceedings.

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

With regard to representative actions for injunctive relief, Article 140, second paragraph, of the Consumer Code contemplates that, prior to commencing the action, the plaintiff representative body may propose a conciliation procedure before one of the conciliation bodies listed in Article 141 of the Consumer Code.

Pursuant to Article 185 of the Code of Civil Procedure, parties may jointly request the judge to favour a conciliation of the lawsuit at any stage of the proceedings. This provision applies to both collective actions for damages and representative actions for injunctive relief.

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

There are currently no statutory compensation schemes available under Italian law.

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

This is not applicable in Italy.

## 9 Other Matters

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

Because Article 140-*bis* is silent in this respect, foreign representative bodies could arguably have standing to bring a collective action for damages in Italy insofar as: (i) they are adequately representative of the interests of a multitude of consumers; and (ii) Italian courts have jurisdiction to hear the case based on applicable Italian or EC rules on jurisdictional competence (e.g., the defendant is domiciled in Italy).

In addition, pursuant to Article 140 of the Consumer Code, certain representative bodies registered in the Member States of the EU have standing to bring representative actions for injunctive relief on behalf of consumers residing in the country where the representative body is registered, provided that the acts for which redress is sought (question 2.3 above) have been carried out, in whole or part, in Italy.

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

The Italian Parliament is currently discussing certain amendments to Article 140-*bis* that may be enacted prior to its January 1, 2009 effective date. Based on information available to date, these amendments relate to the possibility that representative bodies might: (i) commence collective actions against any public administrations; and (ii) pursue claims related to causes of action that have arisen prior to the effective date.



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## CLEARY GOTTLIEB

Litigation and arbitration are major components of Cleary Gottlieb's practice, and they encompass virtually every type of commercial dispute. Building on its capital markets, mergers and acquisitions and restructuring expertise, the firm has developed an extensive litigation and arbitration practice representing States, corporations and financial institutions in large-scale, financial and commercial disputes.

The litigation and arbitration practice of Cleary Gottlieb's Italian offices involves a broad range of contractual, financial, corporate governance and regulatory disputes (including antitrust, energy and transportation), before civil and administrative courts, as well as arbitral tribunals.

Cleary Gottlieb's Italian litigation and arbitration practice "has built up an impressive list of clients and now handles a steady stream of high-profile cases" (Chambers and Partners Global, 2008). Its "performance is excellent in court. The team is made up of lawyers with different profiles who complement each other, creating an invincible outfit" (Chambers and Partners Europe, 2007).