

Poland

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1 Class/Group Actions

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

Yes. The Act of 17 December 2009 on Pursuing Claims in Group Proceedings (Journal of Laws 2010 No. 7, item 44, hereinafter referred to as: the “Act”), in force as of 19 July 2010, introduced a new mechanism for the collective pursuit of claims/group proceedings in the Polish legal system.

In principle, the Act is of a purely procedural nature – it introduces no changes to the substantive legal basis for claims or to the principles of a defendant’s liability.

Group proceedings are an alternative procedure (to the traditional two-party procedure) for pursuing specific individual claims which meet certain requirements.

Article 1 of the Act, defining group proceedings, specifies that it is a judicial proceeding in civil cases in which claims of one kind and based on the same or a similar factual basis are pursued by at least 10 individuals. Anything related to group proceedings but not regulated by the Act is governed by the provisions of the Polish Code of Civil Procedure (hereinafter referred to as: the “CCP”).

Group proceedings are based on the principle of representation, which means that during the proceedings it is the group representative who acts in his own name but on behalf of all the group members. Particular group members are, as a rule, passive in the course of the proceeding.

Polish group proceedings have specific phases (stages) that are characteristic only for these mechanisms on pursuing claims.

The preliminary stage is certification – at this stage, the court decides whether the preconditions (requirements) for the examination of the specific case under group proceedings are met. If the preconditions are met, the court renders the decision on examining the case in group proceedings; if the assessment is negative, the court rejects the action.

The second stage of group proceedings is the shaping of the group’s composition. It begins with the publication of an announcement of the commencement of the group proceedings and concludes with the court’s decision on the composition of the group.

The third stage is an examination of the case. The court assesses the claims filed within the group proceedings in terms of their legitimacy by conducting single evidentiary proceedings for all pursued claims.

The fourth stage is the enforcement proceedings.

Group proceedings can be summarised in one sentence as the Polish version of a US class action, obviously adapted to the continental legal tradition.

At present, after the first few years of the Act being in force, work on amendments to it are in progress, the purpose of which is to improve the effectiveness of group proceedings through the elimination of dysfunctions detected in practice, such as, in particular: the unduly restrictive material scope of the Act’s application; prolonged examination of a case in group proceedings (particularly in the first phase, the certification); obstacles and burdens connected with the pursuit of pecuniary claims in group proceedings; and the risk of charging claimants with unjustified deposits.

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 objective scope of application of the Act is limited. Only three categories of cases can be examined in group proceedings: consumer protection cases; cases on the grounds of liability for damage caused by hazardous products; and cases on the grounds of liability for damages inflicted by tort, except for claims for the protection of personal rights.

Cases involving the protection of consumer claims are cases in which a group of consumers (e.g. a natural person acting for purposes which are outside his trade, business or profession) sues an entrepreneur, regardless of the grounds for their claims (can be both claims under *ex contractu* or *ex delicto* liability, or so-called *culpa in contrahendo* liability). Regulations related to the protection of consumers can be found in the Polish Civil Code (hereinafter referred to as: the “CC”), and in other pieces of legislation (which implement EU Directives).

The two other categories of cases are distinguished by the objective criterion – the legal basis for the claims pursued; in this category of cases, a group can be established by both consumers and non-consumers, e.g. entrepreneurs suffering under a tort of another entity. Matters related to liability for damage caused by hazardous products are governed by provisions of Articles 4491-44910 of the CC. Tort liability (based on the principle of guilt, risk or equity) is governed principally by the provisions of the Civil Code (Articles 415-449 of the CC).

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

The procedure under the Act provides for the management of claims by means of a class action suit. Polish group proceedings are constructed as a mechanism for the collective pursuit of individual claims of particular group members. The judgment rendered in group proceedings is binding on all members of the group regardless of whether it is favourable for the group or not. If the statement of claims is limited to the establishment of the liability of the defendant, the judgment made in group proceedings constitutes a “prelude”, an introduction for subsequent cases for payment of specific amounts to particular group members. In such cases, the court will not re-examine the premises for the defendant’s liability, which has already been determined in the group proceedings, but will only check the amount of the claim of the group member related to the liability which was already established.

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

Polish group proceedings are an opt-in procedure. Each member of the group shall expressly indicate its will to participate in group proceedings by submitting his or her declaration on joining the group. The Act identifies the following obligatory items for a declaration on joining a group: determination of the claim by the entitled person; and identification of the circumstances which justify the claim; as well as membership of the group and presentation of evidence.

It is worth noting here that an introduction of group proceedings in the *opt-out* model into the Polish legal system – in a certain scope – is currently under consideration.

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

Yes; one requirement for the admissibility of group proceedings is that it should refer to the claims of at least 10 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?

The Act requires that the claims of all group members be of one kind and based on the same or a similar factual basis. The premise of the homogeneity of claims means that the group representative must apply to the court for granting each group member the same form of legal protection. In other words, this means that all group members must claim the same (i.e. they must file claims of the same type, e.g. the claim for awarding specified amounts of money). Another precondition, common factual basis of the claims, means that the claims of all group members pursued in group proceedings should be based on the same (i.e. identical) or similar (i.e. equal) factual grounds. This requirement will be met if the claims made by group members arise from a single event (e.g. a tort), or are based on similar events (e.g. they result from similar contracts concluded with the same entrepreneur).

In a case of the pursuit of pecuniary claims in group proceedings (e.g. monetary claims for damages), an additional precondition is required, e.g. standardisation of all members’ claims. The standardised amount of the claims means that the group members – as an entire group or within subgroups of at least two persons – must pursue the payment of a standardised sum, with consideration of the circumstances common for a given group or a subgroup.

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

The group representative has the sole power to bring a group action. The representative may be one of the members of the group or a district (municipal) consumer ombudsman in cases concerning the protection of consumer rights. The Act requires mandatory representation of the group representative by a professional (an attorney or legal counsel).

1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

Where a group action is approved by the court, the court orders that an announcement on the commencement of group proceedings addressed to potential group members be published in the press. The announcement is obligatory in principle, and the court may choose not to publish the announcement only where the facts of the case indicate that all group members have already submitted their declarations. The Act requires that the announcement be published in widely read newspapers or magazines with national circulation (in specific cases – in newspapers or magazines with local circulation). In addition, obligatory items of the announcement are defined, namely: (i) an indication of the court and the parties to the proceedings with the subject-matter (what the case is about); (ii) information about the possibility of joining the group; (iii) deadlines for the submission of a declaration on joining the group; (iv) information about the binding effect of the judgment on the group members; and (v) the rules for remuneration to the group representative’s legal counsel.

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?

During the first few years of the Act’s being in force, 188 group actions have been brought forth, between 20 and 40 statement of claims (lawsuits) annually.

The group proceedings that are initiated apply to various legal areas found within the objective scope of the application of the Act. A relatively large percentage of cases have been related to financial services – against banks and insurance companies in connection with the use of abusive clauses in model contracts or improper performance of contracts.

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

All remedies (both monetary compensation and/or injunctive/declaratory relief), as in every civil case, are available. There are no exclusions in this regard. In addition, the Act introduces a possibility to submit a specific declaratory action for the defendant's liability.

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?

The CCP allows for actions to be brought by NGOs regarding their chartered objects in specific categories of cases (e.g. environmental protection, consumer protection), but these involve an individual action for a specific natural person which may be, in addition, submitted only with the written consent of such a person.

One example of a collective action under the CCP is an action for ascertaining unfairness in the terms of a model contract (known also as abusive terms). These proceedings are aimed at protecting the collective interest of consumers (by reviewing specific abusive terms contained in the model contract).

An entity that uses a contract containing the challenged clauses, i.e. the entrepreneur, is the defendant in such a case.

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 action to ascertain the unfairness of the terms of a model contract may be brought by: (i) any potential counterparty; (ii) any domestic NGO whose chartered objects of activity include the protection of consumers (there is no need for prior approval of such NGO by, e.g., entry to the registry); (iii) a district (municipal) consumer ombudsman; (iv) the President of the Office of Competition and Consumer Protection; or (v) a foreign organisation entered on the list of organisations authorised in EU countries.

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 action to ascertain the unfairness of the terms of a model contract may be brought when the contested abusive clause is used in contracts with consumers as well as within six months after the entrepreneur has ceased using it.

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

Only injunctive relief is available in this procedure. Allowing the action, the court ascertains that certain provision(s) are unfair by citing their content in the operative part of the judgment and prohibiting its/their use.

The final judgment, either accepting or dismissing the action, shall be published in the Monitor Sądowy i Gospodarczy (the official judicial gazette).

In addition, the clauses which have been found abusive by a final judgment are entered into a special Register of Prohibited Clauses kept by the President of the Office of Competition and Consumer Protection. The entry to the register bears a special legal effect – the final judgment has the *erga omnes* effect, i.e. also towards third parties not involved in the proceedings, which means that such clauses cannot be used in relation to consumers.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

Cases examined in group proceeding and cases for ascertaining unfairness in the terms of a model contract are heard by a panel of judges with no jury involved.

3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

The Act provides for an exception to the rule that the District Court is the competent court for all civil cases in the first instance and a Regional Court is competent to examine the cases in group proceedings in a panel composed of three professional judges. There is no single or several court/s specialised in group proceedings. In the second instance, cases are also heard by a three-person judicial panel at one of the Courts of Appeals.

Cases ascertaining abusive terms are heard in the first instance by a specialised Court of Competition and Consumer Protection (one of the divisions of the Regional Court in Warsaw) composed of one judge, and in the second instance, by the Court of Appeals in Warsaw, by a panel composed of three judges.

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?

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Cases ascertaining abusive terms are heard in the first instance by a specialised court – the Court of Competition and Consumer Protection (one of the divisions of the Regional Court in Warsaw) composed of one judge, and in the second instance, by the Court of Appeals in Warsaw, by a panel composed of three judges.

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 CCP does not provide for a test case procedure; the technique of selecting a test or model case is also not used in practice by courts because, for legal reasons, a judgment made in a specific case is only binding between the parties to the proceedings (in the absence of specific regulations to expand the effects of the judgment).

In principle, in any case, which means that it is also possible in group proceedings, the court may first identify issues of fact or law subject to examination as initial issues, and only after they are decided, proceed with hearing the rest of the case. Such a decision depends on the subject matter of the case.

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

Group proceedings in Poland are still a relatively new procedure so it is impossible to distinguish typically used techniques of managing such proceedings.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

The Act contains no specific regulations on expert evidence. The provisions governing the issues related to expert evidence contained in the CCP are also applicable to group proceedings.

The court may appoint an expert (or an academic or scientific/research institution) to report (orally or in writing) in cases that require special expertise. The role of an expert is to provide explanations on specialised topics in the case, and expert evidence should not, in principle, be used to establish facts meaningful to the case.

Parties may obtain an expert report (and they frequently do so in practice), but such a private expert report is not considered to be expert evidence and does not have the evidentiary value of an expert report ordered by the court. Its only function is to supplement the party’s argument.

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. During civil proceedings, in accordance with the principles of directness of trial, witness evidence is admitted and heard by the court. In exceptional cases, the court may hear a witness prior to initiating the proceedings by so-called securing of evidence.

It sometimes happens that expert reports drafted on the initiative of the parties are exchanged between them prior to the trial, in particular where the parties conduct settlement negotiations.

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

The institution of discovery is not known in Polish procedure. There is no obligation to disclose documentary evidence before court proceedings are commenced.

As a rule, each party decides on its own what evidence to disclose and present to the court in connection with the case. A certain “surrogate” of this institution is a regulation that enables the court to obligate one of the parties to the proceedings or a third entity to present a document held by it; possession, insofar as such a document constitutes evidence of a fact of substantial significance for the resolution of the case. This institution is used by the court only at the request of one party, not *ex officio*, in the course of proceedings.

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

The staged approach to group proceedings (see question 1.1) means examination of the case in the first instance takes a relatively long time (even longer than for an ordinary trial), from one-and-a-half to five years. Presumably, such a long period of time for the examination of cases heard in group proceedings up until now has been caused by the legislative ‘novelty’ of the Act itself. Examination of the case in the second instance takes from six to 18 months.

3.10 What appeal options are available?

In group proceedings, the available appeal remedies are the same as in all civil proceedings, i.e. appeal as a means to contest decisions as to the merits of the case and a complaint used for challenging procedural decisions. The Act provides that parties are able to file complaints against the court decision on examining the case in group proceedings or a decision rejecting the statement of claims and the decision of the composition of the group. The complaint must be filed within seven days of the date of service of the decision with substantiation.

Parties are entitled to appeal a judgment at the first instance, in accordance with the general rules (found in the CCP), which shall be filed within 14 days of being served the judgment with the substantiation. The Act regulates the exceptional suspension of the deadline for filing an appeal against a judgment made in a group proceeding, if a request is made to replace the group representative after the judgment is rendered. In such a case, the deadline for an appeal may not end earlier than after two weeks from the moment the court decision concerning the replacement of the group representative becomes final.

In group proceedings, an extraordinary appellate remedy is available against the final judgment of the court of the second instance as to the merits of the case (provided that the value of the object of the dispute exceeds PLN 50,000.00) and against a decision of the court of appeals dismissing the complaint against the decision to reject the statement of claims (on general terms (the CCP), in the form of a cassation complaint to the Supreme Court). The cassation complaint is a highly formalised remedy which may be based only on the grounds enumerated in the CCP.

4 Time Limits

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

Procedural law imposes no time limits for initiating court procedure. The institution of limitation periods in Polish law is related to substantive law. The provisions of substantive law determine the deadline after which, in the event of inaction of the entitled party, specific claims expire (strict time limits) or lose their ability to be enforced (limitation periods).

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?

The particular time limits or limitation periods are defined by the provisions governing a specific institution (e.g. a sales contract). In the absence of specific regulations, the general limitation period for proprietary claims is 10 years, and for claims of periodic performance and claims related to business activity, three years.

The Civil Code provides that it is not the age as such, but the absence of a statutory representative of a person with limited legal capacity (i.e. a minor or completely incapacitated person), that results in suspending the limitation period for such person.

The limitation period for claims for compensation under tort liability is specifically regulated. A claim of this sort lapses in principle after three years since the date on which the injured party established the damage and the identity of perpetrator. However, this period may not be longer than 10 years since the date of the event giving rise to the damage. The limitation period for claims of a minor person to repair personal damage may lapse only after two years since the person reached their full age.

The court is not required to consider the consequences of lapses of limitation periods *ex officio*, but only when such defence (objection) is raised by the opposite party. However, the court may consider the raising of such defence as an abuse of law – then the court will decide about the merits of the claim as if the limitation period had not taken place.

The Act itself contains no specific regulation on the limitation period for claims of particular group members. Only in the following situations: (i) when a group member files, within six months of the decision on the rejection of a group action becoming final, an individual statement of claims covered by the rejected statement of claims; and (ii) when a person who joins the group but is not covered by the final court decision on the composition of the group files an individual statement of claims, does the Act provide that, for a claim of such person, the effects of filing a claim in group proceedings (i.e. primarily an effect of suspension of the limitation period for such claim) shall remain.

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

The Civil Code extends the limitation periods for claims for compensation if the damage arises from a crime. In such a case, they shall lapse after 20 years since the date of the crime, regardless of when the affected person established the existence of damage and identified the person required to repair the same.

5 Remedies

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

The issues related to the scope of damage subject to indemnification are governed by the provisions of the CC. They contain no specific definition of damage; but damage is widely considered to be an involuntary prejudice to the legally protected property/interests of the affected party. The repair of damage involves the loss suffered by the affected party and the lost profits. Special rules refer to the repair of damages to a person covering both property loss and non-property harm, manifesting itself in a negative mental experience of the affected party caused by bodily injury or damage to health. In addition, the affected party is entitled to a claim for payment of a specific sum of money due to the non-property harm suffered (pecuniary satisfaction). However, in group proceedings it is inadmissible to pursue a claim for pecuniary satisfaction (due to the exclusion of claims for the protection of personal rights from the objective scope of the Act). Pursuing other indicated property claims related to a personal loss (for the reimbursement of treatment costs, disability pension) under this procedure is excessively difficult due to their individualised nature.

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?

Polish law imposes no general rule in this regard. If such costs are held to be the normal consequence of the event that brings about the damage (therefore being in a causality relationship with the tort), they are recoverable.

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

Punitive damages are not recoverable. Under Polish law compensation cannot exceed the size of suffered damage.

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 such maximum limit.

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

The amount of damages suffered is determined by the claimant (based on their own or an expert's calculations), and has to be evidenced during the proceeding on general terms. In practice, a motion to admit expert evidence is frequently filed in this respect.

If claims for compensation (or other pecuniary claims) are pursued, the Act requires that the group representative should define the amount of claims pursued by each member of the group in the statement of claims, and also indicate the rules for standardisation of the amount of claims pursued by group members. Furthermore, the Act requires that the court, in a judgment in such cases, specifies the

exact amount to which each group or subgroup member is entitled. Consequently, the court does not award a global amount for the entire group, but links a specific amount of money to a specific member of the group/subgroup.

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

A settlement (in court) in the course of a group proceeding, as well as other dispositions of the claimant (representative), such as withdrawal of claims or waiver or limitation of the claim, require, first of all, the consent of more than a half of the group members. In addition, the court may find that settlement as inadmissible if the circumstances of the case indicate that an act in question is contrary to law or accepted principles of morality, lead to circumventing the law or grossly violate the interest of the group members.

Settlement is inadmissible during an action to ascertain unfairness in the terms of a model contract.

6 Costs

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

In group proceedings, a general rule of continental law applies – the loser pays rule. The losing party bears the cost of the proceedings and is required to reimburse the opponent for the same. Under the Act (as well as under the CCP), there is a rule of a fixed cost of proceedings as opposed to the costs actually incurred by the parties (see question 6.4).

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?

The group representative is the sole claimant and he/she is formally required to bear the costs of the proceedings.

The Act does not regulate the rules for the redistribution of the costs related to the group proceedings (including the costs of legal services) or any allocation to common costs and the costs attributable to each individual claim inside the group. These issues are left to be arranged between the group members.

In practice, the representative enters into an agreement with the group members governing their mutual rights and obligations related to the group proceedings, including the rules for the sharing of litigation costs. One frequently used rule is the allocation of the costs of proceedings between all group members in proportion to the value of the claims pursued by them.

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?

The Act does not regulate these issues.

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?

Yes, the CCP's provisions define the costs of proceedings not as the costs actually incurred by a party, but the costs necessary for a reasonable pursuance of rights or reasonable defence. These costs also include fees paid to legal counsel, but may not be more than six times a specific minimum rate.

The court decides on the cost of proceedings in the decision concluding the case in the given instance.

7 Funding

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

For group proceedings, the Act specifically excludes the option for both parties to demand a release from court costs or court-appointed legal counsel.

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

See question 7.1.

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

The Act is the first piece of procedural legislation in Poland to allow for a contingency fee to the legal counsel of the group representative. However, the fee agreed by the parties may not be more than 20% of the amount awarded to the claimant.

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

Neither the Act nor the CCP refer to the issue of third party funding of claims in the proceedings.

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.

Neither the Act nor the CCP refer to the issue of third party funding of claims in the proceedings.

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.

Neither the Act nor the CCP address these issues.

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

Criminal proceedings can be used as a means of pursuing damages claims caused by a crime, but only by each individual affected party as opposed to the group (in a collective form).

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

Within the scope of a group action, parties may use mediation; according to the Act, the court may refer the parties to mediation at any stage of the case.

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

No such schemes are available.

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

Under mediation, if the parties resolve a dispute between them, a settlement is made. A settlement concluded before a mediator, following court approval, has the legal effect of a settlement entered before a court.

9 Other Matters

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

The Act does not introduce any specific regulations in this regard. Residents from other jurisdictions can bring their claims to a Polish court (if such court has jurisdiction in the case). There are no specific rules to restrict 'forum shopping'.

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

The practical operation of the Act is subject to monitoring and review. Based on experiences from the initial years of its functioning, it is considered that amendments may be entered to allow for a broader and more efficient use of group proceedings in pursuing claims.

At present, work on amendments to the Act is in progress (at Ministry level). The prepared draft bill provides for, e.g., the broadening of the material scope of the Act's application in order for group proceedings to be accessible to a wider scope of claims (not only consumer claims, but also claims of entrepreneurs).

The purpose of the proposed amendments is also to facilitate the pursuit of pecuniary claims in group proceedings through a relaxation of the standardisation precondition (by limiting it to the claim amount criterion) and of claims limited to establishing liability by the clarification that the objective in such cases is to establish the liability of the defendant for a certain event or events.

Moreover, the amendments provide for the improvement in the preliminary phase of certification (verification whether examining the case in group proceedings is admissible), and for the limitation of the possibility to submit a claim for security by the claimant only to the events where the lack of such a security would prevent or seriously impede the execution of the judgment in the scope of the litigation costs in the event of the group proceeding's dismissal.

Furthermore, more elastic forms of the publication of an announcement of the commencement of the group proceedings are being considered (the publication to be in such a manner which is the most appropriate for a given case, in order to notify all potential group members about the class action).

The general idea behind the amendments is to both improve the effectiveness of pursuing claims in group proceedings and to further popularise group proceedings.



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Agnieszka Trzaska is an attorney-at-law and senior associate at Kubas Kos Gałkowski. She is an expert in the scope of class actions, heading the team handling the group proceedings of entrepreneurs against the Social Insurance Company [ZUS] and of flood victims from Sandomierz and Płock against the State Treasury and the remaining competent entities. She has cooperated with the team for court proceedings and arbitration, conducting one of the largest disputes in Europe regarding taking control over one of the mobile telephone operators. She has experience in matters in the scope of international commercial arbitration and economic matters, including disputes between company shareholders. She is a laureate of the Legal Daily "Dziennik Gazeta Prawna" – Rising Stars 2014 ranking and a co-editor of the portal about class action proceedings in Poland and around the world: www.classaction.pl.

She speaks Polish, English and German.



Kubas Kos Gałkowski is a law firm with a well-established position confirmed by rankings. It specialises in court and arbitration proceedings, real estate law, banking and finance, companies law and trade law, as well as bankruptcy law and enterprise restructuring. Kubas Kos Gałkowski was materially involved in the process of implementing the possibility of pursuing claims in group proceedings into the Polish legal system, modelled after the American class action since the very beginning of the legislative process of the Act of 17 December 2009 on Pursuing Claims in Group Proceedings. Professor Andrzej Kubas and Rafał Kos, attorney-at-law, prepared a legal opinion on the drafted bill at the commission of the Bureau of Research Chancellery of the Sejm. Furthermore, Rafał Kos, attorney-at-law, participated in the sessions of the Sejm Justice and Human Rights Committee in the capacity of an expert. Moreover, Kubas Kos Gałkowski is also present in all major domestic initiatives aimed at class action assessment.