



Securities Class Actions Services

# International Guide to Securities Collective Actions

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## International Guide to Securities Collective Actions

Securities Class Action Services research is a global service covering securities class actions and collective actions in all countries that authorize such actions. The following matrix outlines those countries authorizing such actions.

Country	Opt-out/Opt-in	Securities Collective Action Allowed?	Litigation Type	Litigation Funding Available?	Collective Action Filed in Past?	Attorney contingency fees allowed?	Loser pays rule?	Remedies Available	Action by representative bodies allowed?
U.S.	Opt-Out	Yes	Class Action	No	Yes	Yes	No	Injunctive, declaratory, compensatory, punitive, costs, settlement.	Yes
Australia	Opt-in (hybrid)	Yes	Class Action	Yes	Yes	No	Yes	Injunctive, declaratory, compensatory, punitive, costs, settlement.	Yes
Austria	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Brazil	Opt-in	Yes, but class actions are only allowed in limited contexts.	Arbitration	Yes, but number of available funders is limited	Yes	No	Yes	Judicial, Arbitration, Conciliation, and Mediation	Yes
Canada	Opt-out	Yes	Class Action	Yes	Yes	Yes	Depends on province	Injunctive, declaratory, compensatory, punitive, costs, settlement.	Depends on province
China	Opt-in	Yes	Class Action	No (but allowed)	Yes	Yes	No	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	No
Denmark	Opt-in (hybrid)	Yes	Class Action		Yes	No	Yes	Injunctive, declaratory, compensatory, settlement.	Yes
France	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Germany	Opt-in (hybrid)	Yes (at test case level)	Test Case	Yes	Yes	No	Yes	Compensatory (actual damages), Costs, Fees	Yes
Israel	Opt-Out (hybrid)	Yes	Class Action		Yes	No	Yes	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Yes
Italy	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Japan	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes

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Luxembourg	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Mexico	Opt-in	Yes	Class Action	Yes	No	Yes (but capped)	No	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Yes
Netherlands	Opt-out	Yes	Representative Action	N/A	Yes	No (but allowed for rep bodies)	N/A	Settlement terms agreed to by parties.	Yes
New Zealand	Opt-in	Yes	Class Action	Yes	Yes	No	Yes	Injunctive, declaratory, compensatory, punitive, costs, settlement.	Yes
Norway	Opt-in	Yes	Representative Action		No	No	Yes		Yes
Portugal	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Russia	Opt-out	Yes	Class Action	No (although allowed)	Yes	No	Yes	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Yes
Spain	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
South Korea	Opt-out	Yes	Class Action		Yes	No		Compensatory, no punitive.	Yes
Sweden	Opt-in	Yes	Class Action	Yes	No	Yes	Yes	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Yes
Switzerland	Opt-in	Yes	Class Action	Yes	Yes	No	No	Injunctive, declaratory, compensatory, settlement.	Yes
Taiwan	Opt-in	Yes	Representative Action	Yes	Yes	No	Yes (But, SFIPC pays)	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Yes
United Kingdom	Opt-in	No	GLO (group action)	Yes	Yes	No	Yes	Injunctive, declaratory, compensatory, costs, settlement. No punitive.	Sometimes

\* The table has been left blank in cases where information is not available.

Countries not listed above

As a general rule, most countries not listed in the table above do not expressly authorize securities collective actions. They may offer a collective action remedy for say consumer redress actions. However, with regard to securities, they do not as a matter of practice authorize such a remedy.

Group or mass actions, as defined in the glossary of terms below, may arise. While Securities Class Action Services does not cover such cases as a general practice, it may cover them on occasion at its discretion and has done so in the past for cases of a particularly high profile nature.

Glossary of terms

Term	Definition
Attorney Contingency Fees	This practice is the most common in the United States where attorneys will take on the financial risk of losing the suit by paying litigation expenses and costs in return for a percentage of any monetary settlement or recovery. The percentage typically ranges from 20 to 30%.
Compensatory Relief	This is a monetary award where the judgment of a court requires the defendant in a suit to pay to the shareholder class as compensation for the loss or injury inflicted.
Declaratory Relief	Is a judge's determination (called a "declaratory judgment") of the parties' rights under a contract or a statute.
Group Litigation Order (GLO)	This order may be issued by a court in the U.K. to manage a series of shareholder actions in a single suit. This is similar to a group action.
Injunctive Relief	An order of a court directing a party to perform a certain act or to refrain from an act or acts. This is a non-monetary remedy.
Litigation Funding	Litigation funders provide litigation insurance to law firms and/or shareholders. In the typical case, the funder will pay the litigation expenses and costs in return for a percentage of any eventual monetary settlement or judgment. The risk of loss is also born by the litigation funder in most cases. Where a funder is involved, claimants are often required to sign both a litigation funding agreement and an attorney retainer agreement. Litigation funding is most common in opt-in countries where attorney contingency fees are not allowed. Without it, many class actions would not proceed in these jurisdictions.
Loser Pays Rule	This rule, often termed the "English Rule," requires that the loser to an action pay the opposing party's litigation costs, fees, and expenses. This rule is very common in non-U.S. countries, especially those with opt-in systems. Without litigation funding, the rule places increased risk on shareholder classes. However, the risk may be mitigated if the risk of loss is borne by the representative plaintiff rather than the class itself.

## Glossary of terms

(Continued)

Term	Definition
<b>Mass Or Group Actions</b>	Technically speaking, the mass or group action is not a true collective action because such actions do not have class representation by a single claimant, group of claimants, or association. Each claimant must pursue their own case in their own name and the court(s) will decide each case on its own merits. Likewise, there is typically no class wide remedy. A mass or group action will usually form where a large number of claimants have been similarly harmed by the same defendant(s) (such as the typical securities fraud case). In such a case, a firm or firms will attempt to seek out and represent as many of the potential claimants as possible even though they must ultimately do so in individual cases.
<b>Opt-in Systems</b>	In contrast to Opt-out system, opt-in systems require participants to join the suit or perfect their claim before there is a settlement or a judgment. Shareholders are often required to perfect their claim with the litigation management entity even before the action is formally filed in court. In most cases, the eventual settlement or judgment will only apply to those shareholders who have participated formally in the actions. In many cases, participating shareholders are not named parties. However, in some circumstances they may be named parties in the suit.
<b>Opt-Out Systems</b>	Opt-out systems are a type of class action in which the settlement or judgment will bind all eligible claimants whether they file a claim or join the action or not. The claimant may seek redress in a separate action for the same alleged conduct only if they seek to "opt-out" of the class action by the court stated opt-out deadline or "exclusion" deadline. Opt-out systems are typical of true class action systems and will often allow claimants to remain anonymous through the entire litigation process. In most cases, claimants can wait idle until there is a settlement or a judgment and then decide to file a claim to recover their pro rata portion of the distribution.
<b>Punitive Damages</b>	Punitive damages or exemplary damages are monetary damages intended to reform or deter the defendant and others from engaging in conduct similar to that which formed the basis of the lawsuit. Although the purpose of punitive damages is not to compensate the plaintiff, the plaintiff will in fact receive all or some portion of the punitive damage award.
<b>Representative Action</b>	Class action systems, like the U.S., Canada, and others, allow for a single claimant or group of claimants to conduct the litigation on behalf of an entire class of potential claimants. In contrast, representative actions (group actions) require that an appropriately interested association or foundation represent the class of eligible claimants. A pure example of this system is the Netherlands where only representative organizations or foundations recognized by the court may sue the defendant on behalf of the eligible class at large.
<b>Representative Bodies</b>	For the purpose of this document, this term means a foundation, association, or other similar institution that proceeds to represent the interest of a shareholder class in a collective action. This does not include individual shareholders or a group of individual shareholders.
<b>Representative Plaintiff</b>	A representative plaintiff is an individual plaintiff or group of individual plaintiffs that represent a class of shareholders in a collective action. The representative plaintiff may or may not bear the burden of financial loss in the action.

Glossary of terms

(Continued)

Term	Definition
Securities Class Action or Collective Action	(A) The claims/allegations arise from the purchase, sale, and/or ownership of publicly traded securities. These include both debt securities (such as bonds) and equity securities (such as common stocks, options, and ADR’s). (B) A collective action is a judicial process that, in a single suit, attempts to remedy similar harm done to many victims by the same defendant(s). This requires some level of class representation (either by a single shareholder, group of shareholders, or representative institution) as well as a class or collective remedy that claimants share (such as a settlement fund). More broadly, The class action or collective action is a special remedy typically provided for by statute and is often appropriate in only certain situations, such as mass harm caused by fraud in the securities market. In U.S. federal cases, such actions are those seeking certification of the class pursuant to Federal Rule of Civil Procedure 23. However, the certification or enabling statute authorizing the collective action remedy will vary depending on the jurisdiction where the case is being litigated.
Settlement	A settlement is a binding agreement between the parties to a law suit that resolves their differences. The agreement usually involves an exchange of cash, stock, and or other relief in return for a release of the defendant's liability for the alleged conduct asserted.
Test Case Systems	Test case actions are another unique type of collective action system that has developed. The most straightforward example of this system is Germany. In Germany a regional court will select a “model case” that it feels most represents the interests of the entire class of harmed investors. It will then appoint a model claimant who serves in a similar capacity to the lead plaintiff in the U.S. system. However, the model case does not pass a final judgment that is binding on the class of eligible claimants. The court merely uses the model case to decide common issues of law and fact that all claimants share. Once the regional court decides the model case, each claimant must pursue their own case in their own name. The trial court in each individual case will then apply the findings of the model case and issue a judgment on liability and damages based on the individual facts of each claimant.



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