



HOUTHOFF CLASS ACTION SURVEY

The future of class actions



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FOREWORD

'Class actions' is a hot topic for many of our clients.

Our clients are doing business in an arena with blurring borders and increasing global competition. They are being challenged by rapidly developing technologies, while facing other disruptive developments like climate change that older generations were able to comfortably ignore. Simultaneously, they are encountering an increase of regulation issued by governments attempting to come to grips with all these developments, while regulation is at the same time empowering consumers to enforce their rights.

When operating in such a volatile business environment, decisions or choices made may have unanticipated consequences. Consequences that may affect large groups of people in multiple jurisdictions, which could easily trigger a mass response when facilitated by modern technology.

In other words, the increasing complexity and scale of society are paired with an increasing complexity and scale of potential legal disputes. Our clients experience firsthand that this trend is challenging the traditional ways of adjudicating legal disputes, and they recognise that there is a pressing societal demand to facilitate the aggregation of litigation. This is pushed to the forefront of legal debate by NGOs, consumer organisations and other stakeholders. They are aware that new forms of aggregated litigation create various challenges, dynamics, and exposure. And furthermore, that these new forms could create new legal markets attracting different parties and service providers such as third party litigation funders.

When talking about aggregated forms of litigation, the US-class action system is often used as a point of reference. It is a jurisdiction with a long history and has a list of US class actions that sets itself apart from other jurisdictions in many ways. Although often praised, other jurisdictions are not particularly fond of possible 'American

scenarios' and 'US-style class actions'. This pushback has other jurisdictions trying to find different, perhaps even better, approaches to collective actions for themselves. Or is a more unified approach more desirable, for example within the EU? In other words: where are we headed and how will these developments affect businesses and their operations?

At Houthoff, we see that today's business climate is currently undergoing pivotal developments which present new challenges for dispute resolution. Tackling these challenges ahead means keeping up-to-date on new trends and legislation. We also believe that better insight into how class actions work in various jurisdictions holds the key to understanding, assessing, anticipating, avoiding, and, if necessary, resolving today's complex international mass claims cases. We hope that these insights provide valuable practical strategies to all involved. With this in mind, our Class Actions Team has held one-on-one interviews with various experts (claimants' lawyers, defendants' lawyers, third party litigation funders, general counsel and legal counsel) from eight different jurisdictions. In our discussions, we analysed the jurisdiction's class action history, what recent developments have proved to be important, and how we view the current situation – enabling us to anticipate potential developments still to come. The conclusions of these valuable discussions are brought together in this publication.

Without the essential input from all these experts and the efforts from our team members at Houthoff, we would not have been able to share our findings with you. We sincerely believe we can only further advance our field – more specifically, the area of class actions – together. We hope to have provided a first step in reaching that goal and want to thank everyone involved for their contribution. ➤

Albert Knigge

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