SWITZERLAND CLEARS THE PATH FOR CLASS ACTIONS

A proposed new class action procedure should allow companies to make a 'clean break' while facilitating a more efficient dispute resolution process overall

In Switzerland, typical class actions as known in many other jurisdictions are not available. However, 'Dieselgate' and similar cases also affect consumers in Switzerland. If a large number of people suffer the same or similar damage, each has to file their claim individually. While total damages are usually large the individual claims may be relatively small, which means many individuals do not assert their claims because of the disproportionate risk-benefit relationship.

Under current Swiss law, only associations are allowed to bring group actions in their own name for a violation of the personality of their members, provided the articles of association authorise these associations to do so. The Swiss Federal Council (government) now proposes to allow group actions not only for the violation of personal rights but for all claims under Swiss private law, including financial claims. Furthermore, it proposes to introduce a dispute resolution mechanism that would allow companies to find a collective settlement for mass claims for all affected parties.

Group actions

Since the introduction of the Swiss Civil Procedure Code in 2011, not a single group action has been filed by an association or organisation. By revising the law on group actions, the Federal Council intends to introduce more suitable legal tools to this area of dispute resolution.

As before, only associations and other organisations of national or regional importance are allowed to bring group actions. These associations and organisations may not be profit-oriented and must be found fit to protect the interests of their group. They can assert group actions and damaged parties can participate in the claim by an 'opt-in' concept. To ensure all parties are aware of proceedings, the organisations have to notify those parties known to them and also inform the public by means of media releases such as newspapers or online advertisements.

Damaged parties who have already filed an individual claim can join the group action by simultaneously declaring withdrawal of their own action.

Collective settlement procedures

Besides extending the scope for group actions, the Swiss Federal Council also proposes to introduce a new procedure to collectively settle mass disputes. A company causing damage to a substantial number of possible claimants can agree on a settlement with one or more of the organisations that represent the damaged parties and can act on their behalf and in their interest. This offers the defendant the possibility of settling the dispute outside the courtroom, which can be advantageous for reputational reasons.

The settlement agreement has to be submitted to the Cantonal High Court for approval by the defendant and the claimants. Once the settlement agreement has been presented for approval, the court will invite the parties to a public hearing and order them to inform third parties potentially affected about the content of the agreement and the possibility of participating in the proceedings. The court will then review the settlement agreement with regard to its appropriateness. If the court confirms the agreement, it will declare it binding for all damaged parties who did not declare their withdrawal within a certain period (the 'opt-out' concept). If a damaged party opts out, the settlement agreement does not become binding for them and they may file an individual claim.

Implications of the changes

The proposals by the Federal Council are a step towards strengthening collective redress in Switzerland. By extending the scope of group actions and introducing the collective settlement procedure, the Federal Council hopes to break down barriers of access to the courts for damaged parties.

The new collective settlement procedure should allow a company to make a clean break, while facilitating more efficient dispute resolution by enabling courts to resolve a number of similar cases in a single proceeding.

The consultation phase for interested parties on the proposals ended on 11 June 2018. It is expected that the Federal Council will present a draft law to parliament for consideration as the next step.

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