

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.

As of today, French law does not provide for a class/group action similar to that existing in the United States. A draft new law that would create such an action is currently being prepared by the French government. The proposed draft bill has not yet been finalised. The French minister in charge has recently announced that he intends to present it to the French Parliament in 2009. (See question 9.2.)

The existing procedure under French law that comes closest to a group action is the joint representation action (*action en représentation conjointe*) (hereafter “JRA”). This action allows the handling of a group of related claims by individuals suffering from related damages. The action may only be brought by government-approved associations. JRA gives the association the right to file proceedings in the name of several identified individuals in order to seek recovery for their individual damages, which have the same origin and which are suffered as a consequence of the actions of the same person.

In practice, the JRA has had little success as it has proven to be a costly and burdensome procedure which is limited in its scope.

Although not a specific procedure for handling a group of related claims, one should note that criminal proceedings are often used in France for multi-party litigation, in particular in product liability cases. Through these proceedings, claimants benefit from the criminal judges’ vast powers to conduct investigations and they do not have to assume court costs which are paid for by the Ministry of Justice.

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 JRA is limited to certain sectors as it is only available to three types of government-approved associations, i.e. consumer associations, investor associations and environmental associations.

Article L422-1 of the French Consumer Code allows government-approved consumer associations to seek recovery from a merchant of damages suffered by consumers.

Article L452-2 of the Monetary and Financial Code allows qualified investor associations to seek indemnification in court through the JRA for the loss suffered by individual investors.

Pursuant to Article L142-3 of the French Environmental Code

government-approved environmental protection associations can also bring JRA to seek recovery of the loss suffered by individuals in matters governed by environment protection legislation, as defined in Article L142-2 of the Environmental Code.

These associations may initiate JRA proceedings in front of civil, criminal and administrative courts.

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?

The JRA is a group action where related claims are managed together but the decision in one claim does not create a binding precedent for the claims of other individuals which would fall within the group but which are not party to the JRA.

1.4 Is the procedure “opt-in” or “opt-out”?

The JRA is by definition an “opt-in” procedure as it requires each individual to give a written power of attorney to the association for the purpose of the proceedings. See Art. L422-1 of the Consumer Code, Art. L452-2 of the Monetary and Financial Code and Art. L142-3 of the Environmental Code.

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

Yes. In order to initiate a JRA, the association has to produce two or more powers of attorney from individuals. See Art. L422-1 of the Consumer Code, L452-2 of the Monetary and Financial Code and L142-3 of the Environmental Code.

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 claims to be collectively handled through a JRA, it has to be established that the claims relate to individual losses which have a common origin and which have been caused by the same person. See Art. L422-1 of the Consumer Code, L452-2 Monetary and Financial Code and Art. L142-3 of the Environmental Code.

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

With the exception of certain shareholders associations, a JRA can only be brought by government-approved associations.

Approval of consumer associations is granted by the Minister of Justice and the Minister in charge of Consumer Affairs. The approval is granted for five years and is renewable under the same conditions. The conditions that an association must fulfil for approval are provided in Article R411-1 of the Consumer Code: (i) existence for at least one year prior to the application for approval; (ii) a public and effective activity pursuing the defence of consumers' interest; and (iii) at least 10,000 members.

Approval of investor associations is granted after the consultation of the Financial Markets Authority (AMF). Article L452-1 of the Monetary and Financial Code sets the requirements for approval: (i) at least 6 months of existence; (ii) at least 200 individual members having paid their membership fee during this period; and (iii) that the leaders of the association meet certain requirements concerning their fitness and moral character. In addition to these government approved associations, a JRA can also be brought by an associations gathering shareholders of a listed company who have been holding for a minimum of 2 years at least 5% of the voting rights in this company. *See* Art. L452-1 of the Monetary and Financial Code citing Art. L225-120 of the Commercial Code.

Conditions for approval of environmental associations are provided for in Articles L141-1, R141-2 and R141-3 of the Environmental Code. They include in particular a declaration of existence with the competent authorities and proof of activity for at least 3 years in the field of environmental protection. In addition, the association must give evidence that it has a sound organisation and a sufficient number of members considering the territorial extent of its activity.

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?

French law does not provide that potential claimants must be informed of a JRA when it is initiated.

Advertising of the JRA is restricted for all types of associations.

With respect to a JRA initiated by consumer associations or investor associations, Articles L422-1 of the Consumer Code and L452-2 of the Monetary and Financial Code provide that “*the powers of attorney may not be solicited by means of a public announcement on radio or television, nor by means of public posting, handout distribution or personalised letter*”. Some commentators consider that, because the wording of this provision does not refer to newspaper advertising, this type of advertising would not be prohibited.

Unlike government-approved consumer and investor associations, shareholders associations organised pursuant to Article L225-120 of the Commercial Code (*see* question 1.7) can ask a court to be allowed to advertise through any means, at their own expense, in order to solicit powers of attorney from other shareholders.

Contrary to consumer or investor associations, Article L142-3 of the Environmental Code provides that environmental protection associations are prohibited from resorting to any type of advertisement.

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.

There are no official statistics concerning JRA proceedings in France. The number of JRA proceedings reported unofficially in France from 1992 to 2005 varies from 5 to 20.

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

French law allows for monetary compensation as well as for compensation in kind. Both injunctive and declaratory relief can also be obtained, depending on the nature of the claim.

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?

Under French law, certain authorised representative bodies, mainly associations, are permitted to bring collective actions for the protection of a collective interest both before civil and criminal courts.

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?

In order to bring an action seeking to defend collective interests, representative bodies need to be authorised by law. In a few rare cases, criminal courts have exceptionally authorised associations such as anti-smoking associations to join criminal proceedings when they had not been authorised to do so by law. *See* Cass Crim. 7 feb. 1984; Bull. Crim., n°41; Cass Crim 29 April 1986: Bull Crim n° 146.

French law allows numerous types of associations to bring collective actions as a civil party, when a criminal conduct violates the collective interest which they intend to defend. These associations include, in particular, consumer, environmental protection and investor associations, trade unions, associations whose mission is to fight racism, discrimination, crimes against humanity, war crimes, sexual abuse and child abuse, to protect deported persons, sick or disabled persons, to protect the victims of terrorism, of collective accidents etc. *See* for example Art. 2-1 to 2-20 of the Code of Criminal Procedure, Art. L421-1 of the Consumer Code, L142-2 of the Environmental Code, L452-1 of the Monetary and Financial Code, L2132-3 of the Employment Code. The criteria which the association must meet to acquire this right of action before criminal courts is set by law and depends on the purposes of the association. Certain public authorities such as those in charge of the protection of the environment are also permitted to bring such claims.

In addition, a limited number of associations are also allowed under French law to initiate or join civil actions to defend collective interests even in the absence of a criminal offence: government-approved consumer associations and investor associations. *See* Art.

L421-1, L421-6 and L421-7 of the Consumer Code, L452-1 of the Monetary and Financial Code, L2132-3 of the Employment Code. The criteria for government approval of these associations are outlined in question 1.7 above. Trade unions do not need any specific approval to bring such claim.

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.

In criminal cases, as well as in civil cases based on criminal offences, the action of the representative body is generally admissible. However the criminal offence concerned must directly or indirectly harm the collective interest which the organisation aims to defend according to its articles of association. For many authorised associations, the scope of the right of action granted by law is limited to certain specific criminal offences depending on the purposes of the association. *See* Art. 2-1 to 2-20 of the Code of Criminal Procedure. Others are allowed to bring a collective action in case of the violation of any criminal provision within a specific field provided the collective interest they defend is harmed by such conduct. For example, the right of action of environmental protection associations, is limited to the criminal violations of environmental regulations concerning, wildlife, environment, water, air, soils, landscapes, pollutions, nuclear safety, radioprotection, and town planning. *See* Art. 142-2 of the Environmental Code. Finally, for some organisations, such as trade unions, consumer and investor associations, French law does not limit the action to certain criminal offences: the only requisite is that the criminal conduct harms the collective interest protected by the association. *See* Art. L2132-3 of the Employment Code, L422-3 of the Consumer Code, L452-1 of the Monetary and Financial Code.

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

If the action is brought on the basis of a criminal offence, the associations can obtain injunctive and declaratory relief aiming at stopping the illicit criminal conduct. Associations can also claim monetary compensation for damages caused by the criminal conduct to the collective interest they represent.

In the absence of a criminal offence, consumer associations have the right to join a civil action already commenced by a consumer to request: (i) the discontinuation of the unlawful conduct at the origin of the consumer's damage; or (ii) the declaration that unfair contract provisions are void. They may also seek these remedies by filing directly a collective action before civil courts. *See* Art. L421-6 and L421-7 of the Consumer Code. Similarly, investor associations have been granted the right to act directly in front of a civil court to stop an unlawful conduct which harms directly or indirectly the investors' collective interest. *See* Art. L452-1 of the Monetary and Financial Code.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

Jury trial is not available in France before civil courts. Jury trial is only applicable in criminal proceedings and for the most serious crimes.

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?

There is no specialist court or judge to handle JRA.

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?

Claimants can join a JRA up until the closing of the arguments before the Court of First Instance.

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?

There are no specific management procedures applicable to group actions in France.

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

See question 3.4.

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?

Court-appointed experts are the most common method used in France to determine technical issues. During the judicial expertise the parties have the opportunity to file submissions and present arguments on the issues at stake before the expert.

Expert witnesses presented by the parties are not prohibited as such, but are rarely used in practice. As a matter of principle, experts can only state an opinion on factual issues as opposed to legal issues.

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?

Although it is not prohibited, in practice there is no deposition process under French law before civil courts. However, court-appointed experts are often cross examined in criminal trials.

Witness statements and expert reports have to be exchanged between the parties prior to trial.

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

The parties choose what evidence they wish to produce in court.

There is no pre-trial discovery under French law. If an expert is appointed by the court, the parties must provide the expert and the other parties with all information that the expert may request.

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

In civil cases, it takes from about one to two years. Proceedings can last longer if an expert is appointed by the court.

3.10 What appeal options are available?

The decision of the Court of First Instance may be appealed before the Court of Appeal. Appellate proceedings can last from one to two years. The decision of the Court of Appeal may then be appealed before the *Cour de cassation* whose review is limited to issues of law.

4 Time Limits

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

Time limits depend on the statute of limitations applicable to the type of claim at stake.

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?

In civil matters, the general statute of limitations for most claims whether based on tort or breach of contract, is five years from the date claimant knew or should have known the facts which allowed him/her to file the claim. *See* Art. 2224 of the Civil Code.

However, certain exceptions apply to specific types of claims. With respect to defective product liability claims, the statute of limitation is three years from the date claimant knew or should have known of the existence of the damage suffered, of the defect or of the identity of the manufacturer of the product. *See* Art. 1386-17 of the Civil Code. In the absence of wrongdoing by the manufacturer, the action is also time barred if filed more than ten years after the product was released on the market. *See* Art. 1386-16 of the Civil Code.

Actions based on an event that caused bodily harm to claimant must be brought within 10 years from the date that the initial or aggravated injury was suffered. *See* Art. 2226 of the Civil Code. This period is extended to 20 years in case of barbarism, or of child molesting or sexual abuse. *See* Art. 2226 of the Civil Code.

Actions based on the seller's liability for the latent defects of the products sold must be brought within two years from the discovery of the defects. *See* Art. 1648 of the Civil Code. If the action is based on the lack of conformity of the product, it is time barred two years after delivery of the product. *See* Art. L211-12 of the Consumer Code.

The statute of limitations doesn't run or is suspended for most claims brought by minors or by persons who are made wards of court. *See* Art. 2235 of the Civil Code.

In criminal matters, the general statute of limitations is one year for a misdemeanor, three years for felony and 10 years for the most serious crimes. The statute of limitations can be extended in the event the victim of a felony or a crime is underage. *See* Art. 7, 8 and 9 of the Code of Criminal Procedure.

French courts may not disregard the provisions of the statute of limitations.

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

When the statute of limitation starts running from the time claimant knew or should have known about the facts allowing him/her to bring the claim, concealment of these facts has an impact on the date on which the time limit starts to run. *See* Art. 2224 of the Civil Code.

5 Remedies

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

All of the above mentioned damages are recoverable through JRA. Economic loss will only be recoverable to the extent that it is a direct and immediate consequence of the wrongdoing.

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?

No. In the absence of actual injury, damages cannot be recovered. Hypothetical events cannot be taken into consideration by French courts.

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

French law does not provide for punitive damages.

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?

The only limit on the damages recoverable under French law corresponds to the actual injury suffered by claimant.

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

Damages are appreciated individually for each claimant party to the action. Damages caused to claimant as a result of a bodily injury are usually quantified by French courts according to standard scales. Other damages are quantified in light of the evidence produced by claimant in court.

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

There are no specific provisions with respect to the settlement of claims in collective or representative actions. The settlement of a civil claim must be made in writing and comply with the provisions of Art. 2044 *et seq.* of the Civil Code. The parties cannot settle with regard to criminal aspects of a claim as well as to matters pertaining to public order. *See* Art. 2046 of the Civil Code. Court approval is not required.

6 Costs

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?

- (a) Court fees and other incidental expenses such as the costs of a judicial expertise are usually paid for by the losing party. *See* Art. 696 of the Code of Civil Procedure. However, this decision is at the discretion of the court.
- (b) There is no 'loser pays' rule under French law with respect to legal costs. The decision as to whether the losing party shall bear part or all of the legal costs of the winning party is at the sole discretion of the court. In practice the amount awarded by French courts for legal fees only covers a fraction of these costs.

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?

Costs of litigation (court fees and other incidental expenses) are likely to be shared equally amongst the members of the group in a JRA. However, the sharing of the costs is at the discretion of the court.

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 party withdrawing its claim has to bear the court costs and could be condemned to pay the legal costs of the adverse party, if, at the time of the withdrawal the other party had already made a claim to this effect. *See* Art. 399 of the Code of Civil Procedure. In practice, as mentioned in question 6.1 above, this question is at the court's discretion.

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?

The fees of a court-appointed expert are set by the court in light of the amount and quality of the work performed and of the compliance by the expert with the deadlines set by the court. *See* Art. 284 of the Code of Civil Procedure. The costs incurred by the parties such as the cost of expert witnesses and lawyer's fees are not managed by the court. Court costs are assessed at the end of the proceedings.

7 Funding

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

Legal aid is available to individuals who are French nationals, French residents and citizens of an E.U. Member State. The aid, which is rather small in amount, may be requested for actions brought before any type of court.

Government-approved associations generally receive subsidies from the French State.

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

The availability of legal aid depends on the revenue and social situation of the applicant.

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

Under French Bar rules, the funding of an action which would be exclusively based on contingency fees is not permitted.

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

Third party funding is not, as such, prohibited under French law. For example, a JRA is likely to be at least partially funded by the association which brings the action.

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.

See sections 1 and 2.

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.

Assignment of a right of action against a third party is permitted under French law. *See* Art. 1689 et seq. of the Civil Code. There is no limitation under French law regarding consumers' right to assign a claim or a disputed claim to a third party.

It is however questionable whether the assignee would be able to recover all types of damages suffered by claimant, in particular moral damages. In this respect, the *Cour de cassation* considers that the action seeking compensation for defamation - i.e. moral damages - is attached to the person whose right has been infringed and cannot be sold. *See* Cass. Civ. 1ère, 30 May 2006, n° 04-17.102, Bull. Civ. 2006, I, n° 273, p. 238.

In addition, French law prohibits the assignment of litigious claims to members of the judiciary, clerks, bailiffs, lawyers and notaries. *See* Art. 1597 of the Civil Code.

With respect to the procedure, assignments of claims have to be notified to the debtor by a bailiff. *See* Art. 1690 of the Civil Code. The cost of this notification could make it unprofitable to purchase small consumers' claims.

Finally, in order to prevent abuse and speculation on disputed claims French law gives the defendant the right to buy the litigated claim from the assignee at the price paid to the assignor plus interests and expenses. *See* Art. 1699 to 1701 of the Civil Code.

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

Yes. JRA can be brought before criminal courts to pursue civil damages claims to the extent that these claims have their origin in a criminal offence. *See* Art. L422-3 of the Consumer Code, Art. L452-

1 of the Monetary and Financial Code and Art. L142-3 of the Environmental Code.

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

Alternative methods of dispute resolution including conciliation and mediation are available under French law for individual claims. Recent trends indicate that French public authorities intend to increasingly seek to develop ADR procedures in the future.

Mediation:

A court may appoint a mediator for the settlement of a claim. The procedure and the overall result are closely supervised by the judge. The procedure is not limited to a type of action. *See* Art. 131-1 et seq. Code of Civil Procedure.

In addition to these general provisions, French law provides for several specific mediation procedures for consumers' claims in sectors such as banking. (*See* Art. 312-1-3 of the Monetary and Financial Code), energy (Decree n°2007-1504 of 19 October 2007), healthcare (Art. L1142-5 of the Code of Public Health) or telecommunications. Although these procedures have been created to manage individual claims nothing prohibits mediation authorities from handling series of related consumer claims.

Arbitration:

French law provides that arbitration clauses are only valid if included "in contracts concluded in the context of a professional activity." *See* Art. 2061 of the Civil Code. Arbitration cannot therefore be used as a means of resolving consumers' claims in domestic matters. French courts have however allowed arbitration of consumer claims in the context of international disputes. *See* Cass. Ire civ., 30 mars 2004 : Rev. arb. 2005, p. 115, note X. Bouccobza ; RTD. com. 2004, p. 447, obs. E. Loquin.

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

Several statutory compensation schemes have been created over the years in France in order to compensate for damages suffered as a result of mass torts. Special funds have been created for victims of acts of terrorism, of technological catastrophe, of asbestos-related diseases, of medical accidents, iatrogenic affections and hospital-acquired infections and for the victims of HIV-contaminated blood. *See* Art L126-1 and 422-1 of the Insurance Code, Law n°2003-699 of 30 July 2003, Art. 53 of the Law n° 2000-1257 of 31 December 2000, L1142-1 of the Public Health Code, Art. 47 of the Law n°91-1406 of 31 December 1991.

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

The remedy available in the above-mentioned French alternative dispute resolution mechanisms is mainly monetary compensation but the parties in a mediation or conciliation procedure can agree to other types of relief. In statutory compensation schemes, monetary compensation is the only remedy available.

9 Other Matters

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

There is no provision under French law restricting associations to file a JRA in the name of foreign litigants.

With regard to consumer associations, the action to stop unlawful behaviour (*action en cessation d'agissements illicites*) may be pursued by foreign organisations whose name has been published in the Official Journal of the European Union pursuant to article 4 of the Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests.

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

The French Secretary of State for consumer affairs has declared in September 2008 that a new law introducing the equivalent to a class action in French law would be presented by the government to the French Parliament at the beginning of year 2009.

In the past four years, there have been several unsuccessful attempts to pass such a law in France but the successive governments have never clearly endorsed any of these proposals.

The last attempt was made on 26 May 2008 when the Commission on Economic Affairs of the French *Assemblée Nationale* presented an amendment on class action procedure to the *Assemblée Nationale*. This amendment was later withdrawn but stands as the last proposal to date.

The main characteristics of this projected group action are the following:

- the group action can only be brought by government-approved consumer associations. Approval would be granted pursuant to the same criteria as for JRA. *See* question 1.7;
- the group action is limited to consumers' claims against merchants based on (i) breach of contract, (ii) the violation of any regulation concerning the sale of goods or the provision of services, or (iii) violation of competition law; and
- remedies available do not include indemnification of moral prejudice and of bodily injury.

In terms of procedure, the court would first decide on the admissibility of the action which would require in particular that existence of a significant and identifiable group of consumers harmed by the conduct of the same merchant be established. The court would then rule on the merits of the claim regarding the merchant's liability. If it decides that the merchant is liable, the court would set the amount of the individual lump sum indemnifications for the damages suffered by consumers belonging to the group as well as the conditions of payment for such indemnifications.

In a second phase, the judgment would be advertised at the costs of the merchant in order to make it known to aggrieved consumers. The court would set a time-limit for the consumers who are members of the group to claim indemnification of their prejudice.

The decision would only be *res judicata* for the parties and consumers who filed their claim for indemnification.



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Jacques Sivignon is a senior associate in the Paris office of Dechert who has several years of experience in international dispute resolution, having specialised in international litigation and arbitration since 1997.

Mr. Sivignon's principal activity is acting for multinational clients before French Courts in complex commercial litigation, product liability, industrial risk and post acquisition matters with a particular focus on pharmaceutical, medical device and healthcare industries.

Mr. Sivignon also acts as counsel for various state entities and multinational clients in ICC arbitrations concerning general corporate, license, construction and engineering (including power plants), and energy-related disputes. His practice includes the setting aside or enforcement of international arbitration awards, including attachment and tracing of assets.

Before joining Dechert in 2005, Mr. Sivignon was a member of the International Litigation/Arbitration Department of Coudert Brothers' Paris (1998-2001) office and has also worked in Brussels (1997-1998) and Sydney (2001-2003).

He is admitted to the Paris and New York Bars, and is fluent in French, English and Greek.

Significant representations include:

- a leading pharmaceutical company before the Commercial Court in a \$500 million dispute arising out of the termination of a co-development agreement for a new product;
- a pharmaceutical company in several disputes relating to comparative and misleading advertising and the use of clinical trials;
- an American fund seeking to enforce an English decision against foreign governments' instrumentalities in France.

Education: Mr. Sivignon is a graduate of the University of Paris X (Maîtrise de Droit des Affaires, with honours, 1995) and New York University School of Law (LL.M., competition law and IP, 1996).



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