Italian Class Action

On 2 July 2009, the Italian Senate finally approved the bill containing class action regulations (Senate Bill 1195-b), thus replacing Article 140-bis of the Consumer Code, as set forth in the

Legislative Decree n. 206 of 6 September 2005.

Art 140-bis. - (Class Action).

1. The homogeneous, individual rights of consumers and users - as set forth in paragraph 2 – can also be enforced through class action as provided for by this article. To this end, each class member can individually or through associations to which they grant power of attorney or committees in which they participate, take action to assess liability and claim an order to pay damages and repayments.

2. The action enforces:

   a) the contractual rights of a number of consumers and users who find themselves in the same situation in relation to the same company, including the rights relating to contracts underwritten in accordance with Articles 1341 and 1342 of the Civil Code;

   b) identical rights due to final consumers of a given product in relation to its manufacturer, even in the absence of a direct contractual relationship;

   c) identical rights to payment of damages due to these consumers and users and deriving from unfair trade practices or anti-competitive behavior.

3. Consumers and users who wish to avail of the enforcement referred to in this Article can join class action without a counsel for the defense. Joining class action entails discontinuation of any individual restitutory or remedial action based on the same title, except for terms indicated in paragraph 15. An adhesion contract shall indicate both the address for service and the constitutive elements of the asserted right with its probative documentation. This contract shall be then lodged at the registry, even by the plaintiff, by the date referred to in paragraph 9, letter b). According to articles 2943 and 2945 of the Civil Code, the prescription shall take effect on the date of notification of the request and, for those who joined later, after lodgement of said adhesion contract.

4. The claim is submitted to the trial court located in the capital of the region in which the company is based; however, the court of Turin has jurisdiction over the region of Valle d'Aosta, the court of Venice over the regions of Trentino-Alto Adige and Friuli- Venezia Giulia, the court of Rome over the Marche, Umbria, Abruzzo and Molise, and the court of Naples over Basilicata and Calabria. The court shall handle the lawsuit as a unified bench.

5. The claim is put forward with a writ of summons, notified also to the office of the public prosecutor at the court in charge, who may only intervene for the judgment on admissibility.

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6. Upon first hearing, the tribunal shall decide by order on the admissibility of the claim; however, it may suspend judgment when there is an ongoing inquest before an independent authority on the facts which are relevant to the decision, or a trial before the administrative judge. The claim shall be declared inadmissible if clearly unfounded or there is a conflict of interest, if the judge does not recognize the identity of the individual rights which are enforceable according to paragraph 2, and when the proposing party seems incapable of adequately protecting the class's interests.

7. The order that determines admissibility is subject to claim before the court of appeal in the peremptory time limit of thirty days from either its disclosure or notification, whichever occurs first. The court of appeal decides on the claim by order in closed session no later than forty days from the lodgement of the appeal. The appeal of the court order upholding a motion does not suspend the proceeding before the tribunal.

8. The judge settles the expenses in the inadmissibility order, also according to Article 96 of the Code of Civil Procedure, and orders the most appropriate form of public notice by and at the expenses of the unsuccessful party.

9. The court sets the terms and methods of the most appropriate form of public notice in the order with which it admits the action, so that those belonging to the class can join promptly. Public notification is a condition for the prosecution of the claim. By the same order the court shall:

   a) determine the characteristics of the individual rights involved in the judgment, specifying the criteria according to which individuals seeking to join are included in the class or must be regarded as excluded from the lawsuit;

   b) establish a peremptory time limit that does not exceed one hundred and twenty days from the deadline for public notification. By this date, the adhesion contracts shall be lodged at the registry, even by the plaintiff. A copy of the order is sent by the registry to the Ministry of Economic Development which is in charge of further publication, including on its website.

10. The intervention of a third party is excluded under Article 105 of the Code of Civil Procedure.

11. The order with which the court admits the action also determines the course of the procedure. In accordance with the principle of '*audi alteram partem*', the fair, effective and prompt handling of the trial is thereby ensured. In the same or subsequent order, which can be modified or revoked at any time, the court shall prescribe measures aimed at preventing undue repetitions or complications in the presentation of evidence or arguments; it burdens the parties with the form of public notification which it considers necessary to protect the members; it regulates the preliminary investigation in the manner that it deems most appropriate and disciplines any other procedural matter, except for any formality which is not essential to the debate.

12. If the court grants the claim, it shall issue a verdict by which – according to Article 1226 of the Civil Code - the final amounts due to those who have joined the act shall be paid, or shall establish the homogeneous calculation criterion to pay these sums. In the event of the approval of a class action moved against operators of public services or utilities, the court takes into account what is acknowledged in favor of users and consumers claiming damage in the

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relevant service charters which may have been issued. The sentence becomes enforceable one hundred and eighty days from publication. Payment of the amounts due which are issued during that period are exempt from any right or increase, even as regards the accessories of the law accrued after publication of the verdict.

13. As required by the provisions of Article 283 of the Code of Civil Procedure, the court of appeal shall also take into account the total amount of the sum owed by the debtor, the number of creditors, and the related difficulties in returning undue payments if the appeal is accepted. Until judgment becomes final, the court may order that the total sum owed by the debtor should be lodged and remain bound in the manner deemed most appropriate.

14. The ruling establishes that the trial is also binding upon the members. It is made without any prejudice to the single action of those individuals who do not join collective action. No further class action can be put forward for the same facts and against the same company after the closing date for joining assigned by the judge under paragraph 9. Those proposals which are lodged within said deadline are automatically combined as a matter of course if pending before the same court; alternatively, the judge next in charge orders the removal of the lawsuit from the register, issuing a peremptory time limit which does not exceed sixty days for readmission before the first judge.

15. Cancellations and transactions which occurred between the parties shall not affect the rights of the members who have not expressly agreed to them. These rights are reserved even in the case of extinguishment of judgment or early conclusion of the trial.

2. As set forth in the Legislative Decree of 6 September 2005, n. 206 , as superseded by paragraph 1 of this Article, the provisions of Article 140-bis of the Consumer Code shall apply to unlawful acts carried out after the date of entry into force of this Act.