

CLASS ACTIONS LAND IN PORTUGAL

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We asked some of the experts in Portugal, the reality of the class action phenomenon arriving this side of the Iberian Peninsula. Who can bring them, the procedure and measure of damages, are all uncovered and answered here

Image: **Martim Valente**, a senior counsel in the EU and Competition law practice at PLMJ, **Sofia Vaz Samapaio**, partner at Morais Leitão, **Fabio Loureiro**, partner at Eversheds Sutherland and **Duarte Henriques**, founder at Victoria Associates.

by **michael heron**

I have interviewed a lot of legal practitioners over the years, and when asked why they wanted to become a lawyer, often the response is having watched legal drama tv series or films from a young age. Of course, all the lawyers I interviewed often admit that this was somewhat naïve, and there were many other reasons to end up at law school. But there is something gripping about the way lawyers are portrayed. In the film adaptations of some of the **John Grisham** novels, the stories that tend to make it to the big screen invariably surround the theme, class action lawsuits. It is no surprise therefore, that the class action originated in the US and is still widely perceived predominantly as an American term. Class actions are simply a type of lawsuit where one of the parties is a group of people who are represented collectively by a member or members of that group. However, several European countries with civil law, have made changes in recent years to allow typically consumer organisations to bring claims on behalf of consumers. The recently enacted Decree-Law no. 114-A/2023, the result of the transposition of the Directive, brings Class Actions into the Portuguese legal

system in their own right.

Bringing class actions to Portugal

In practical terms, who can bring class actions to Portugal? **Martim Valente**, a senior counsel in the EU and Competition law practice at PLMJ, says, "The rules on who can bring a class action in Portugal are broad. Anyone can bring a class action and the general rule is that class actions are opt out." Valente goes on to explain that in practice, in recent years consumer associations have brought the greatest number of class actions, and most of these have related to alleged infringements of competition law. **Fabio Loureiro**, partner at Eversheds Sutherland, explains in more detail the importance of the "opt out" and how it works in practical terms. "One of the main particularities of the Portuguese class action framework is that any member of a group or community that collectively holds the relevant interests, is entitled to bring up a class action on behalf of all the others who don't expressly exclude themselves from said representation, instead of the general rule applicable, according to which the legitimacy to bring up legal action belongs exclusively to whoever holds the individual interests or rights in question." He goes on to explain that the opt-out system is in place in Portugal, "so it is up to any members of the relevant group or community to expressly request their exclusion from representation in any particular class action."

Sofia Vaz Samapaio, partner at Morais Leitão, explains that there aren't limitations to the types of claims that may be brought on a collective basis. "Class actions may be brought to protect all type of interests (namely, public health, the environment, quality of life, goods and services, consumer protection, cultural heritage and public interests) and to seek both injunctive measures (including provisional or definitive measures aimed at stopping, identifying or prohibiting an unlawful practice) and redress measures (providing remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid)."

Martim Valente argues that, "a claimant needs to demonstrate that they are representing diffuse interests, i.e., that they are representing a class of consumers and not individual interests. Note, however, that there is no stand-alone class certification process in Portugal. Courts typically decide on standing and the scope of a class of consumers at final judgment." Valente also makes an important point by highlighting the fact "Portugal is a one-shot jurisdiction." He adds that, "a defendant must present all of its procedural and substantive defences in its defence to a claim. This can often place a defendant on the back foot, as the deadlines for submitting a defence are very tight."

The procedure

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