

Summary of Class Action under the Civil Procedure Code

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Definition

Class action is a type of civil proceedings involving several injured persons who are affected by the same facts and legal principle or the same ground of damage. The plaintiff who is the representative of the injured class will file a lawsuit on behalf of all injured persons. Once the Court gives judgment, the judgment shall have the consequence of binding all members of the class even though they are not the parties in the lawsuit.

The Main Characteristics of Class Action

1. The characteristics of members of a class

Class members are persons who have the same rights deriving from the same facts and legal principle and have the same unique characteristics of the injured class even though the characteristics of the damage are different.¹ The Court may allow a class action to be conducted only when the Court is satisfied that the class is so numerous that to conduct a case as an ordinary case shall be complicated and impractical.²

2. The consequence of the judgment

The judgment of the Court shall have the consequence of binding the parties and the members of the class even though they are not the parties in a lawsuit.³

¹ The Civil Procedure Code Section 222/1

² The Civil Procedure Code Section 222/12 (3)

³ The Civil Procedure Code Section 222/35

3. Opting out of being members

Members of the class have the right to opt out of being members by notifying their wish in writing to the Court within the time period prescribed by the Court.⁴ The consequences of opting out of being members are that the person who has opted out from being a member of the class cannot request to opt back in to be a member of the class, cannot join their claims as joint plaintiffs in class action, will not be bound by the judgment of the Court on the class action case and can file a suit in another case.

4. The qualification of the plaintiff and the counsel of the plaintiff

Plaintiff and the counsel of the plaintiff are able to conduct the case in such a way to justly and sufficiently protect the right of the class of persons.⁵ The plaintiff shall demonstrate his or her good faith and intention to conduct a case for protecting the interests of members of a class. In addition, the counsel of the plaintiff shall show to the Court that he or she has knowledge and ability to proceed with the class action case without a conflict of interest with members of the class, and he or she can pay the advance payment for the procedure of class action.

5. Lawyer Fee

Besides lawyer fee, the Court shall determine the amount of award that the defendant must pay to the counsel of the plaintiff who helps the plaintiff win the lawsuit. Such award must not exceed thirty per cent of the amount that the defendant must pay to the plaintiff and the members of a class according to the judgement of the Court.⁶

The types of cases that may be requested for Class Action

Tort cases, breach of contract cases and cases claiming various legal rights such as the law concerning the environment, the protection of consumers, labor, stocks and stock markets, and trade competition.⁷

⁴ The Civil Procedure Code Section 222/16

⁵ The Civil Procedure Code Section 222/12(5)

⁶ The Civil Procedure Code Section 222/37

⁷ The Civil Procedure Code Section 222/8

The requirements for permission for Class Action

The Court may allow the Class Action to be conducted only when the Court is satisfied that:

(1) the plaintiff's complaint must be in writing and clearly set forth the nature of the claim and of relief applied for, as well as the allegation on which the plaintiff's claim is based and of the class of persons with the same characteristics as the plaintiff. In a case where the plaintiff sought, as a relief, that the defendant is to settle the debt in monetary form, such relief of the class of persons must state the principles and methods of calculations in order to pay money to the members of the class in so far as it is possible but it is not necessary for the amount of money to be received by each member of the class to be set forth;

(2) the plaintiff has demonstrated the same unique characteristics of the class of persons which are sufficiently clear to be acknowledged. That is to say, there is a class of persons who have damage deriving from the same facts and legal principle as the plaintiff;

(3) the class is so numerous that to conduct a case as an ordinary case shall be complicated and impractical;

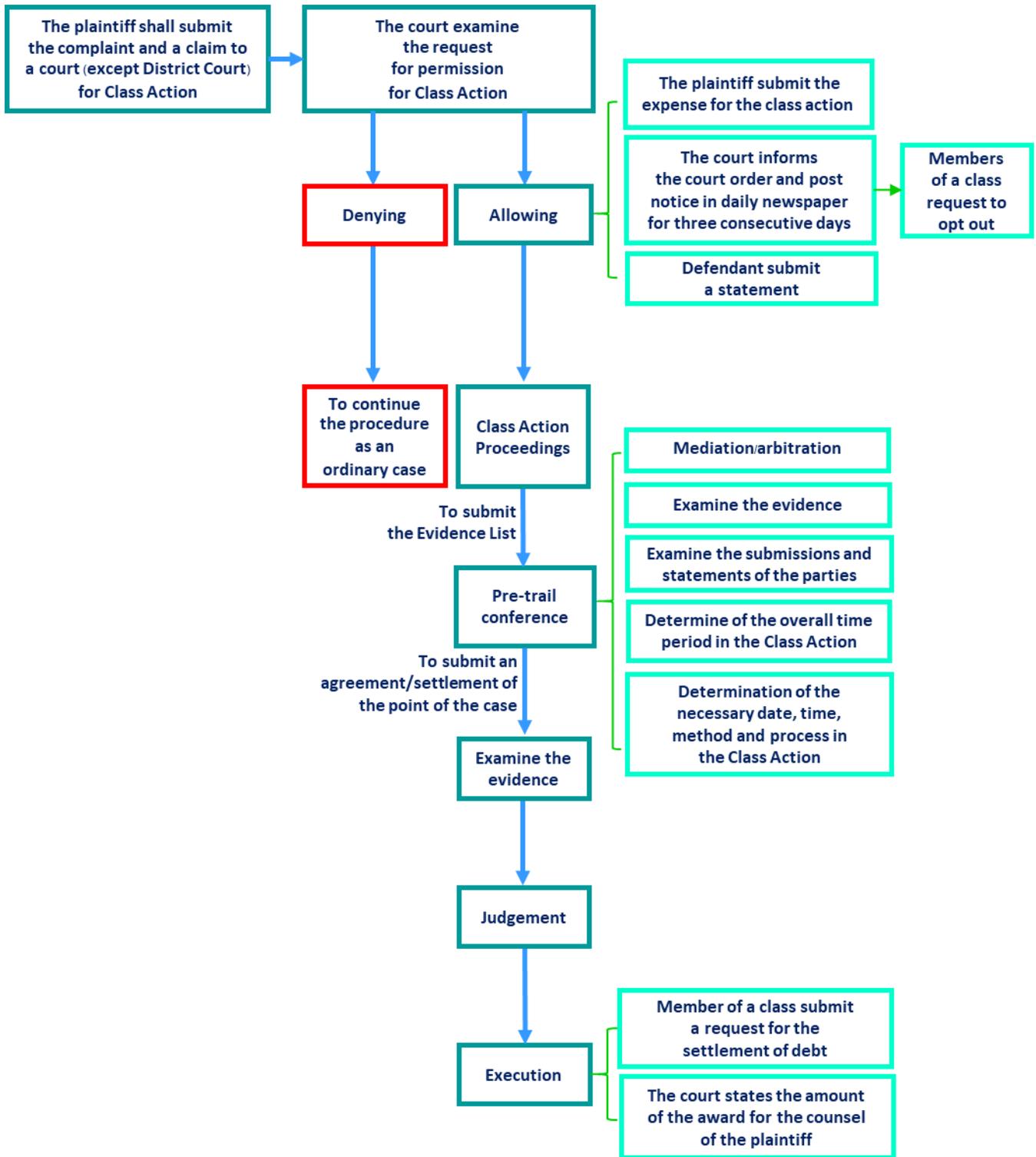
(4) class action proceeding is more just and efficient than as an ordinary case;

(5) the plaintiff has demonstrated that the plaintiff is a member of a class with the characteristics, interests, including the acquisition of the right to be a member of the class as prescribed by the President of the Supreme Court, if any; and the plaintiff, including the counsel that the plaintiff proposes to be the counsel for the class is able to conduct a the case in such a way as to justly and sufficiently protect the right of the class of persons.

The order allowing or denying the class action may be appealed to the Court of Appeal within the period of seven days from the date on which the Court issues the Court of Appeal's judgment to be final. In a case where the Court issues an order denying a class action, the Court shall continue the procedure as an ordinary case.⁸

⁸ The Civil Procedure Code Section 222/12

The Procedure for Class Action



Notice and Advertising

Once the Court issues a final order to allow a Class Action, the Court shall send a notice of permission order for class action in duplicate to the members of the class in so far as they are known via registered mail with acknowledged receipt or electronic mail⁹ and shall post the notice in a well-known daily newspaper for three consecutive days.¹⁰ Moreover, the Court may prescribe a publication of the notice by posting it at the Court, in the Court website, the Office of the Judiciary or other websites, or other mass media or any other additional means, as deemed appropriate.¹¹

Rights of members of a class

(1) a right to attend the hearing;

(2) a right to request the Court to issue an order showing that the plaintiff does not have the qualifications and interests, or the plaintiff does not acquire the right to be a member of the class in good faith;

(3) a right to search and copy all or parts of documents used in the case in court bundle;

(4) a right to appoint a new counsel to conduct the case in place of the counsel for the class if it appears to the Court during the hearing that the counsel for the plaintiff is unable to conduct the case in such a way that sufficiently and justly protects the rights of the class, or that the counsel for the plaintiff requests to withdraw from the class action;

(5) a right to request a replacement of the plaintiff;

(6) a right to object the request for a replacement of the plaintiff, the withdrawal of the complaint by the plaintiff, the agreement or settlement in the matters of the case, and the agreement by the parties to submit the case to be decided by arbitration;

⁹ Regulation of the President of the Supreme Court on Class Action B.E. 2559 (2016) Article 27

¹⁰ The Civil Procedure Code Section 222/15

¹¹ Regulation of the President of the Supreme Court on Class Action B.E. 2559 (2016) Article 29

(7) a right to examine and argue the request for settlement of debt of other members of the class who submit the request for the settlement of debt.¹²

To exercise the rights, a class member may appoint a counsel to act on his or her behalf.

The limitation period

In a case where the Court issues a final order allowing a class action, the limitation period for bringing the complaint for the members of the class shall be interrupted from the date on which the plaintiff submits the request for the class action.

In a case where the Court issues a final order denying the class action, if it appears that the limitation period for bringing the complaint has lapsed during the period of consideration of the request for class action or that the period shall lapse within sixty days from the date on which the Court issues the final order, the members of the class shall have the rights to submit the complaint within sixty days from the date on which the Court issues the final order.¹³

However, if there exists the following circumstances, it shall be deemed that the limitation period is never interrupted:

- (1) the Court issues a final judgment for a dismissal of the case;
- (2) the Court issues an order to cease the class action;
- (3) the Court issues an order to dispose of the case because of the withdrawal of complaint;
- (4) the Court dismisses the case because the ground for the case is not within the Court's jurisdiction or without cutting short the rights for members of the class to bring a new complaint;
- (5) members of the class opt out of being a member because they do not want to be members of a class, do not want to be bound by the agreement or settlement of the points of the case or do not want to be bound by arbitration's decision.¹⁴

¹² The Civil Procedure Code Section 222/17

¹³ The Civil Procedure Code Section 222/33

¹⁴ The Civil Procedure Code Section 222/34

The judgement of the Court

The judgment of the Court shall have the consequence of binding the parties and the members of the class.¹⁵ The members of the class cannot argue or object this judgement. However, a class member has no right to appeal and petition the judgment or order of the Court except appeals only about his request for the settlement of debt.¹⁶

Execution

Members of the class have the right to submit a request for the settlement of debt but have no right to proceed with the execution by themselves.¹⁷ The plaintiff or the counsel for the plaintiff shall have the power to proceed with the execution of the case for the plaintiff and the members of the class. When the execution officer has completed compiling the money or any other assets of the defendant and the Court fees have been deducted, the execution officer shall pay money to those entitled in the following order: preferential creditor and the creditor in a mortgage transaction, award for counsel for the plaintiff, court fees for the plaintiff, and the plaintiff, members of the class and any other creditors entitled to a share of assets.¹⁸

Expenses for the Class Action and award for the counsel of the plaintiff

In a class action, the plaintiff who commences the case shall pay for **the Court fees**, only for the relief sought in the part of the plaintiff.¹⁹ When the order allowing the class action is final, the Court shall order the plaintiff to submit **the expenses for the class action** that are a part of the Court fees to the Court²⁰ such as the expense of sending the communication and notice to the members of the class. Moreover, there are the other **expenses relating to Class Action** such as travelling expenses, accommodation expenses, expenses for knowledge training for the class members and expenses for gathering evidence. In a case where the Court gives judgment in favor of the plaintiff, the Court shall order the defendant to compensate the plaintiff for the expenses for the class action as the part of the Court fees for the plaintiff. Moreover, if the counsel of the plaintiff

¹⁵ The Civil Procedure Code Section 222/35

¹⁶ The Civil Procedure Code Section 222/46

¹⁷ The Civil Procedure Code Section 222/35

¹⁸ The Civil Procedure Code Section 222/44

¹⁹ The Civil Procedure Code Section 222/10

²⁰ The Civil Procedure Code Section 222/14

paid the advance payment for expenses relating to the Class Action, the Court shall order the defendant to compensate for such expenses as an award for the counsel of the plaintiff.

The Court will determine the amount of the award that the defendant must pay to the counsel of the plaintiff apart from other amounts that the defendant must pay relating to the Court's judgment. The said award is aimed to encourage the counsel to help and facilitate the plaintiff and the members of the class to proceed with the class action case thoroughly. In determining the amount of the award for the counsel of the plaintiff, the Court shall take into account the difficulties of the case together with the period of time and the work of the counsel for the plaintiff, including the expenses relating to the class action which is not the Court fees that the counsel for the plaintiff has paid. Such the amount of the award for such counsel for the plaintiff must not exceed thirty percent of the amount that the plaintiff and the members of the class have the right to receive.²¹

²¹ The Civil Procedure Code Section 222/37