

Government Introduces Class Actions

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Background

In a modern society where mass distribution and mass consumption is a common feature, it frequently happens that a large number of people are injured by a defective product or otherwise negatively affected by incidents or measures taken. In such circumstances similar claims or disputes arise for a large number of people. The existing Swedish litigation procedure has so far not been structured to accommodate this kind of dispute.

However, in a recently presented bill (2001/02:107) the Swedish government has proposed that a new litigation form - class action - be added to complement the ordinary litigation procedure. According to the government there is a manifest need to improve access to court for group claims.

The deficiencies in legal protection in this respect are not limited to situations where a few private persons are affected by legal losses. Even if the individual loss or injury is small, the total loss or injury for a group may amount to a great sum. This results in unjust profits for businesses that exploit the weakness of the legal system. It is important that violations of substantive legal rules are brought to court. The proposal on class actions aims to fix these deficiencies in a comprehensive and general manner, and to improve the effectiveness of the existing substantive legal rules.

Class Actions

A class action is a suit brought by someone with no specific authority to sue on behalf of

the members of a group. The group members are not parties to the action and do not need to be active. Nevertheless, a judgment in a class action case applies to and against all the group's members.

Standing to Litigate

Individuals, organizations or authorities may commence a class action. In order to be entitled to commence an individual class action the plaintiff must have a claim that is covered by the action and which he or she could have litigated in ordinary proceedings (ie, the plaintiff must be a member of the group he or she wants to represent).

A non-profit association that, according to its bylaws, protects consumers' or salary-earners' interests in disputes between consumers and businesses regarding a commodity or service offered for sale by the business, has the right to commence a class action.

Public class actions may be commenced by an authority or by a municipality. However, it is left to the government to lay down, by working instructions or other administrative regulations, the extent to which an authority may commence class actions.

Specific Requirements

An action may only be maintained as a class action if there are common contentious issues for the group members and a class action is the best available method. Moreover, the plaintiff must be considered competent to protect the group members' interests. In addition, certain special conditions must be present. The class action is not intended to replace individual two-party litigation where the latter would function effectively and meet the demands of the situation. A class action should only be used where the need for legal procedural alternatives is not satisfied within the framework of the existing procedural system, or where an action for or against a group may be expected to lead to obvious procedural economic benefits.

The Scope of a Class Action and Settlements

A class action will cover all group members who, in a certain period of time after the commencement of the action, notify the court that they wish to be covered by the plaintiff's action. This naturally presupposes that the members have been informed. The members of the group shall accordingly be informed of the action in a way that the court finds suitable.

The authority of the group representative to act on behalf of the group members is strictly procedural. Representation does not mean that a member of the group assigns his or her respective civil right to settle the subject of the dispute. A settlement can therefore only be binding for the members of a group by order of the court.

Procedural Rules

The proposal contains provisions regarding change of plaintiff and suspension of the class action. However, the rules in the Code of Judicial Procedure shall still apply to a great extent. For example, the provisions in the code regarding the bar on duplications of actions (*lis pendens*), right of intervention, joinder of actions, injunctions, the pre-trial stage and

the main hearing will also apply to class actions.

The Right to Appeal

Judgments and decisions in class actions may be appealed to the same extent as in ordinary actions. In addition, the proposal contains specific rules concerning appeals in class actions.

Costs

The rules about costs in the Code of Judicial Procedure shall apply in a class action, which means that a group member cannot be responsible for the costs of the opposite party unless he or she, by negligence, has caused costs or unnecessary litigation.

Further, the plaintiff shall be entitled to cover his or her costs from the amount adjudged by the court, if the defendant does not pay such costs.

Counsel

In order to protect a group's non-active participants, it is necessary to ensure that the group is represented in an expert and purposeful manner. In accordance with this, the proceedings in individual class actions and class actions by organizations must be conducted by counsel who is a member of the Swedish Bar Association. However, if there are special reasons the court may decide that an action may be conducted without counsel or by counsel who is not a member of the Swedish Bar Association.

A plaintiff who wants to commence a class action may enter into a contingency fee agreement with his counsel. However, such an agreement is applicable to the group members only if approved by a court.

Comment

Class actions have been criticized for having certain drawbacks, especially regarding the risk of 'pushy' attorneys with a personal interest in the case's outcome. This is partly a consequence of the contingency fee agreements. However, the possibility of entering into such agreements is considered to be a necessary condition for an effective class action system.

It seems there are several advantages to a class action system, especially as concerns claims for environmental damages. However, it remains to be seen whether the advantages will outweigh the drawbacks.


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