

The Dutch class settlement system improved

On 27 July 2005, the Act on Collective Settlement of Mass Damages (*Wet collectieve afwikkeling massaschade*) came into force. The Act, which like US class settlements operates on an opt-out basis, has proven to provide for an effective and efficient method for class settlements. On 1 July 2013, the Act was refined to further facilitate class settlements.

Dutch class settlement system

Under the Dutch class settlement system, interest groups (usually foundations) - acting on behalf of a class of aggrieved parties - can negotiate a settlement with the damage paying party who agrees to pay compensation to the aggrieved parties. The compensation may be paid on the basis of "damage classes". The interest groups and the parties that must pay the compensation can then jointly submit the settlement agreement to the Amsterdam Court of Appeal (the 'Court') for approval.

The settlement agreement must contain:

- the occurrence to which the settlement agreement relates
- a description of the class of persons affected
- the compensation that will be paid
- the requirements needed to be eligible for compensation
- details of how the compensation has been calculated.

Once the settlement agreement is approved by the Court, it is binding on

the class of aggrieved parties, unless they expressly elect to opt out within (in general) three months after approval of the settlement agreement.

By opting out the aggrieved parties avoid being bound by the terms of the settlement agreement. Those who have not opted out may collect their compensation within the timeframe specified in the settlement agreement (up to one year).

Collectively binding settlements: case law

The class settlement system has been used frequently. Dexia, for example, entered into a collective settlement in respect of certain share lease products. Another well known example is the collective settlement by Shell following a class action initiated in the US with regard to the re-categorisation of its petroleum reserves. The Dutch settlement was declared collectively binding on the non-US aggrieved parties. The combination of a US settlement and the Dutch settlement comes as close as one can get to a global settlement. Other examples are the settlement in relation to affected policyholders of insurance company Vie d'Or and the

settlement in relation to investor claims for late disclosures by Vedior.

The Dutch settlement system has generated significant interest outside the Netherlands, in particular as the system is available to foreign parties even if there is very little, if any, connection to the Netherlands. In a collective settlement between Swiss-based Converium and ZFS and their non-US investors, the Court held it had jurisdiction even though Converium and ZFS were neither domiciled in the Netherlands nor had shares listed on the Dutch stock exchange, and even though the vast majority of the investors was based outside the Netherlands. For the Court to accept jurisdiction it appears sufficient to set up a Dutch foundation or association that enters into the settlement on behalf of potential claimants and that executes the settlement agreement from the Netherlands (ie by distributing the compensation to the aggrieved parties from a Dutch bank account).

For further information on the Converium decision, please refer to our client briefing of 7 February 2012, ['The Converium decision: promoting the Netherlands as a centre for class settlements'](#).

Review of the class settlement system

The Ministry of Justice reviewed the experiences with the Act over the past years and came to the conclusion that the Act provided for an effective and efficient method for collective dispute resolution.

That said, the Ministry identified a number of hurdles, such as the lack of automatic suspension of pending legal proceedings when a request to declare a reached settlement agreement binding is submitted. As a result the Act has been enhanced to further facilitate class settlements.

Amendment of the Act

On 1 July 2013, the Act was amended to improve the system on various points. The amendments consist, *inter alia*, of the following:

- If a request to have a settlement agreement declared binding is submitted to the Court, related proceedings pending in the Netherlands are automatically suspended until the end of the opt-out period (previously such suspension was only possible upon request).

- Further, pending the request to the Court, the limitation period of all claims will be interrupted. A new limitation period of two years starts to run at the end of the opt-out period.
- The possibility of a "pre-trial" hearing is introduced during which the district court may be instrumental in getting the parties to reach an agreement.
- The class settlement system can now also be applied in a bankruptcy thus avoiding costly claim validation procedures.

Separately, a recent amendment of the Dutch Code of Civil Procedure will facilitate class settlements. It is now possible to submit a direct request to the Supreme Court for prejudicial questions of law. Even though this amendment has a broader application than only for class settlements, it is expected that it will also enhance the settlement system as it will enable parties to get more rapid clarity on questions of law that divide them.

Implications of the amendment

Even though the Dutch class settlement system already provided for an effective and efficient method for collective settlement of mass claims in case parties are willing to reach a settlement agreement, the Act has been enhanced to further facilitate collective settlements. Furthermore the Act makes the collective settlement system available to the trustee and creditors in a bankruptcy, which is novel.

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