

Thought leadership

Consumer goods & retail: tougher regulation and more class action risks

May 2026



Consumer goods & retail: tougher regulation and more class action risks

Key takeaways

- 1 Enforcement authorities in the UK and Australia have gained stronger powers to enforce consumer protection law, including significant fines on companies in breach – while the EU has renewed its focus on enforcement and is instituting a new product liability regime.
- 2 Meanwhile, in the US, state-level consumer protection has become more active, notably on the issue of algorithmic pricing.
- 3 "Greenwashing" is becoming a major concern for consumer protection enforcement authorities as well as a source of collective claims.
- 4 Businesses also need to be aware of potential exposure to "bluewashing" and "stock drop" exposures when a share price falls after hidden or misleading information comes to light.

Consumer protection authorities around the world are stepping up their enforcement activities, with some wielding new powers to penalise infractions. "Greenwashing" – making false, exaggerated or misleading claims about the environmental benefits of a product or service – now features firmly among supervisory concerns. "Bluewashing" – where a company overstates or falsely claims its commitment to ethical issues such as social responsibility and human rights – could soon join it. Businesses in the consumer goods and retail sectors also need to be aware of the increased risk of class actions across multiple jurisdictions, whether under the EU's incoming product liability regime or from shareholders in so-called "stock drop" claims. The Law Commission in the UK is also considering the introduction of a consumer class action regime. In this briefing, we examine the key developments across Australia, the UK, the EU and the US.

Consumer protection

Australia: maximum penalties doubled

In March 2026, the Australian Government passed legislation doubling the maximum penalties for breaches of consumer protection laws from A\$50 million to A\$100 million. The Australian Competition and Consumer Commission (ACCC) can also impose penalties of three times the benefit gained by the breach, or 30% of a company's adjusted turnover if the benefit cannot be determined. These limbs of the maximum penalties provisions were not changed by the March reforms, which were the latest in a series of efforts to strengthen Australia's consumer protection legislation.

Amendments introduced in 2022 had a particularly marked impact on the ACCC's enforcement, incentivising the regulator to pursue more consumer protection actions. "The penalties associated with contravening the consumer protection regime in Australia now match the substantive penalties for competition law contraventions, such as civil cartel conduct or an abuse of dominance claim," says Ryan Draper, a Clifford Chance Counsel based in Sydney. While the penalties now mirror those that companies can face from a competition claim, consumer protection claims tend to be cheaper and less protracted. In the last three years, the ACCC has commenced 33 enforcement proceedings, of which 29 related to consumer protection matters, compared with just four competition-related proceedings. "This shows that the ACCC is heavily focused on pursuing matters which protect consumers, rather than pursuing matters which impact competition between rivals," says Draper.

“The penalties associated with contravening the consumer protection regime in Australia now match the substantive penalties for competition law contraventions, such as civil cartel conduct or an abuse of dominance claim.”



Ryan Draper
Counsel, Sydney

United Kingdom: new regime up and running

The UK's consumer protection regime was given more teeth by legislation, which took effect in April 2025. That provides the Competition and Markets Authority (CMA) the power to impose fines of up to 10% of a company's group global turnover. "For the first time ever, the CMA can impose fines for breaches of consumer protection law and, as in Australia, those fines are in line with those that the legislation prescribes for breaches of competition or antitrust law," says Michael Grenfell, a Clifford Chance Partner in London and the former head of enforcement at the CMA.

As of March 2026, the CMA had commenced 14 investigations under the new regime and, on 15 April, it imposed its first fine – of £4.2 million, imposed on a driving school for "drip pricing", i.e. misleading consumers by advertising a headline price for lessons that concealed a compulsory add-on charge (a booking fee). In addition to the fine, the driving school was obliged to issue refunds to consumers who lost out from this practice.

The CMA's main current concerns about consumer protection law breaches relate to:

- misleading statements that induce consumers to make a purchase, including: lack of pricing transparency (including drip pricing, as well as false discounting); and fake online reviews (including the suppression of critical reviews);
- "unfair" contract terms, i.e. terms that create a significant imbalance against consumers (for example, those that wholly preclude the right to cancel or to refund); and
- excessive barriers to exiting from subscription contracts.

Whereas the regulatory penalties for consumer protection breaches in the UK match those for competition infringements, the UK's "opt-out" collective actions regime currently extends only to competition law. However, in April 2026 the UK Government asked the Law Commission to consider, and consult on, introducing a consumer class action regime England and Wales. "One of the things they're looking at in particular is whether the regime should allow for opt-in as well as opt-out claims," says Danielle Zandi, a Clifford Chance Senior Associate in London. "An opt-in regime would mean that consumers would have to take a proactive step to be involved, whereas an opt-out regime would automatically join consumers falling into the affected class. An opt-out regime is probably less attractive from the perspective of businesses, as it's likely to mean larger claims and potentially more of them."

"If it happens, it will be a big additional risk for businesses and another reason to make sure that they comply with consumer protection law," adds Grenfell.

“For the first time ever, the CMA can impose fines for breaches of consumer protection law and, as in Australia, those fines are in line with those that the legislation prescribes for breaches of competition or antitrust law.”



Michael Grenfell
Partner, London

“An opt-in regime would mean that consumers would have to take a proactive step to be involved, whereas an opt-out regime would automatically join consumers falling into the affected class. An opt-out regime is therefore probably less attractive from the perspective of businesses, as it’s likely to mean larger claims and potentially more of them.”



Danielle Zandi
Senior Associate, London



European Union: emphasis on enforcement

EU consumer protection policy has, with the European Commission's 2030 Consumer Agenda adopted in November 2025, taken a clear step in the direction of emphasising enforcement. The Consumer Agenda sets out a five-year framework for four priority areas, namely:

- removing barriers that prevent consumers from fully benefiting from the EU single market;
- digital fairness and consumer protection online;
- sustainable consumption – ensuring consumers have access to sustainable products and services, and are better protected against greenwashing; and
- effective enforcement and redress.

The Commission has stated that the aim of the Consumer Agenda is "to enhance consumer protection and foster competitiveness, social fairness and sustainable growth", which will be achieved "by strengthening the consistent and effective implementation, application and enforcement of EU rules."

"In short, that means more rules, more enforcement activity, more evidence being generated, and this, of course, leads to more ways for consumers to seek compensation," explains Priscilla Tatschner, a Clifford Chance Partner based in Frankfurt.

Alongside this tighter focus on consumer protection, the EU jurisdictions have developed better tools for collective redress following the Representative Actions Directive 2020, which came into force in member states in mid-2023. "For consumer goods and retail, that combination is particularly powerful because claims are very easy to scale and the reputational impact is immediate," says Tatschner. An example is Germany, which is seeing more class actions under the representative action architecture established by the German Consumer Rights Enforcement Act (*Verbraucherrecht durchsetzungsgesetz*), which provides more practical pathways to redress, even if it remains an opt-in system and comes with safeguards around funding. Lawsuits are often filed first in claimant-friendly jurisdiction such as, for example, the Netherlands, with the potential for copycat claims ensuing elsewhere.

Businesses should prepare for collective claims, which will become increasingly significant due not only to new legal frameworks but also more established funding mechanisms. As part of that preparation, businesses ought to pay attention to potential green or social claims (treating them akin to regulated product claims rather than marketing messages) as well as their supply chains, and build a complaint-ready ESG and supply chain response playbook and evidence pack. "If you can't evidence the claim, explain the pricing logic behind algorithmic pricing or document your supply chain control, assume that it can become an enforcement action first and then a collective action," she adds.

“In short, that means more rules, more enforcement activity, more evidence being generated, and this, of course, leads to more ways for consumers to seek compensation.”



Priscilla Tatschner
Partner, Frankfurt

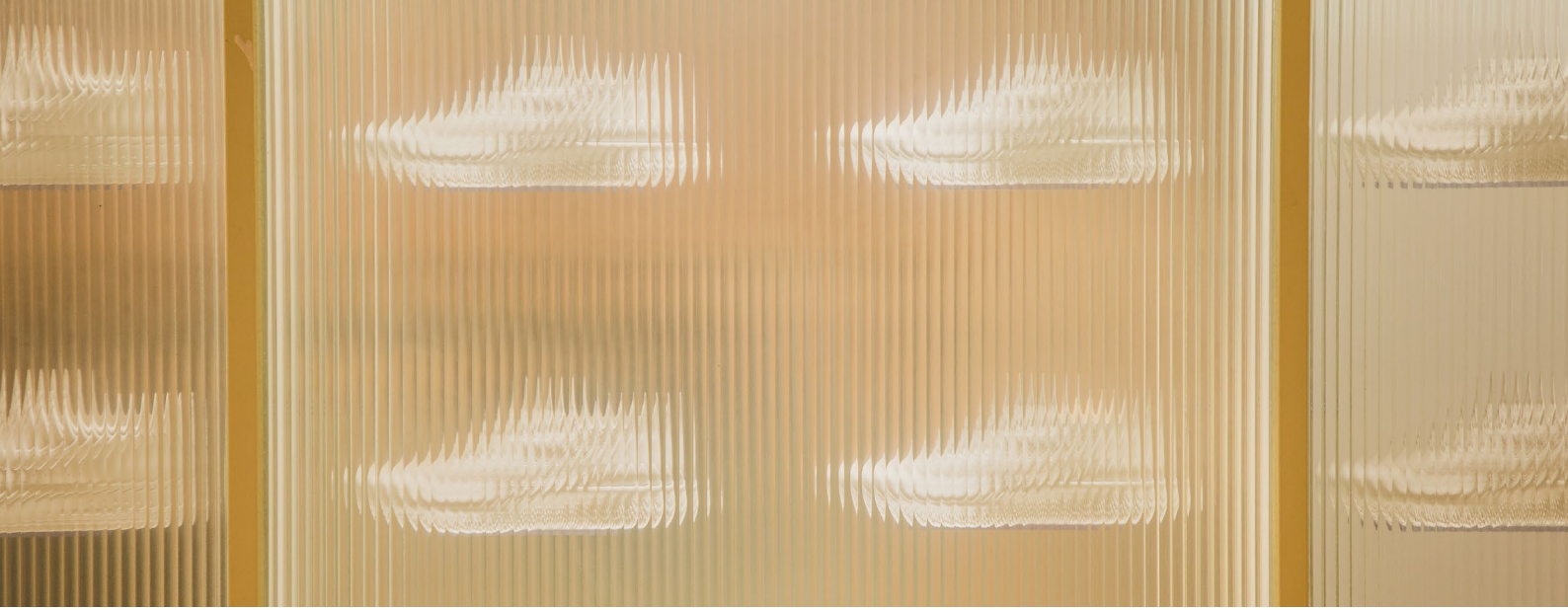


A new product liability framework for Europe

The EU's Revised Product Liability Directive – which replaces a 1985 directive and is due to come into force in December 2026 – also heightens the risk of product liability claims becoming mass claims. It brings with it three key changes:

- What counts as a product will expand to explicitly include items such as software, digital manufacturing files and AI systems, including when they are embedded in physical goods. This means that software updates could result in liability.
- There will be broader categories of damage – including data-related harm and medically recognised psychological harm – as well as a longer list of potential defendants across a product's supply chain that can be held liable. These include importers, distributors, online platform providers and fulfilment service providers.
- Claimants will face lower barriers when it comes to evidencing product defects or causation of harm, especially in instances where technical complexity creates excessive difficulties for claimants.

"The tools under the new product liability directive are primarily designed to assist individual consumers but will be available to collective claimants as well," says Tatschner.



United States: crackdown on algorithmic pricing

A major development in the US regulatory landscape over the past year has been the proliferation of state-level legislation on technology-assisted pricing, encompassing algorithmic pricing, dynamic pricing and surveillance pricing. These practices – which have also attracted scrutiny in the EU and the UK – have increasingly come under fire. "This is happening at the same time that state attorneys general are taking a more active role in competition and consumer protection enforcement than they have in the past," says Danielle Morello, a Clifford Chance Counsel based in Washington, DC.

Over 100 pricing transparency bills were proposed in 2025 across 30 US states, and that trend continued in Q1 of 2026, giving rise to a regulatory patchwork wherein different states have taken different approaches. New York's Algorithmic Pricing Disclosure Act took effect in November 2025 and requires businesses to disclose that they are using algorithms to set prices, with each failure to provide the required disclosure treated as a separate violation enforceable, with penalties up to \$1,000 per violation under the state's consumer protection enforcement provisions. California, meanwhile, has focused on so-called 'common pricing algorithms' that use competitor data to set pricing, making coercion to adopt one of these algorithms a specific liability. "Critically, this is not just in the blue (predominantly Democrat) states where we typically see consumer protection regulations," says Morello. A law passed in Tennessee in January will make using personal data to set individual prices for goods and services via algorithms a violation of the Tennessee Consumer Protection Act from July.

"Variable pricing, including members-only pricing, without disclosures is quickly becoming a compliance and liability risk, and not just in terms of government investigation but also private litigation including class action exposure," Morello says. "We're seeing that retail and e-commerce companies are really some of the most at risk under this new wave of legislation. Transparency is key to our advice here: we advise companies to be prepared with a defensible narrative to explain their data flows and pricing logic to enforcers."

“State attorneys general are taking a more active role in competition and consumer protection enforcement than they have in the past.”



Danielle Morello
Counsel, Washington, DC

Greenwashing

Since large numbers of environment-conscious consumers are likely to favour green products, exaggerated or untrue claims about the sustainability or environmentally friendly properties of a product or service are a major concern of consumer protection agencies. Claims that might be judged to be 'greenwashing' range from explicit statements about the product's environmental credentials to more implicit indicators – for instance, a leaf symbol featuring on the packaging.

United Kingdom

In the last few years, the UK's CMA has opened investigations of possible greenwashing in the fast fashion, fast-moving consumer goods and heating and insulation sectors. In addition, the CMA issued guidance by way of a Green Claims Code in 2021, which has since been supplemented by sector-specific guidance and, in January 2026, by additional clarification around supply chain responsibility for green claims.

European Union

Greenwashing enforcement in the EU is becoming more co-ordinated and more technical, with consumer protection authorities now expecting businesses to scientifically substantiate sustainability claims. "That, of course, changes the risk profile because the challenge is no longer just reputational; it becomes a compliance question with evidence demands," says Tatschner.

“The challenge is no longer just reputational; it becomes a compliance question with evidence demands.”



Priscilla Tatschner
Partner, Frankfurt

The increase in enforcement comes alongside more stringent rules; for example, those contained within the bloc's Directive on Empowering Consumers for the Green Transition, which explicitly targets misleading green claims and non-credible sustainability labels.

"From a business perspective, the first battle is then often about evidence," Tatschner continues. "You have to be sure that you know and can explain exactly what you claimed and can prove it." Red flags companies should look out for include claims about company-level sustainability that do not have a clearly defined scope, as well as claims to sustainability that rely on offsetting future performance without clear verifiable commitments and monitoring.

Australia

The picture is similar in Australia. "Businesses need to be able to demonstrate they have formal procedures in place to show exactly how their products are green," says Draper. A key case on this issue in Australia involved a garbage bag manufacturer which was fined A\$8.25 million by the ACCC after advertising that its bags were made from 50% recycled ocean plastic; it was found that the bags were actually made from 50% 'ocean-bound' plastic, recovered from communities in Indonesia as far as 50km inland. The ACCC has also opened proceedings against a sunscreen manufacturer that labelled some of its products as 'reef-friendly' on the basis they did not contain oxybenzone or octinoxate, which have been banned or are subject to strict limits in some jurisdictions. However, the products are alleged to contain other ingredients that could potentially damage reefs.

“Businesses need to be able to demonstrate they have formal procedures in place to show exactly how their products are green.”



Ryan Draper
Counsel, Sydney

United States

The area to watch for greenwashing claims in the US is consumer class actions, which can be brought under certain state consumer protection or false advertising laws, or under common law. Class actions allow a few plaintiffs to bring claims on behalf of others, and this can be a large group – potentially everybody who purchased the product at issue. By bringing class actions, consumers can significantly raise the risk (and settlement cost) to defendant corporations, and increase pressure through negative publicity.

While cases are often settled or dismissed, businesses should not grow complacent about the risk of greenwashing class actions. "They should still take this seriously," says Kaitlyn Beyer, a Clifford Chance Associate in New York. "Defendant corporations face risks including the cost of litigation, settlement or damages – which can be substantial if the case involves a larger consumer class – and opportunity costs. They also risk reputational damage that can result from the claims, even if the claims aren't proven."

Companies making sustainability or environmental claims should therefore ask themselves how those claims are going to be understood by consumers, and whether the reasonable interpretations are accurate and can be supported. "If not, they should be thinking about how they can improve those claims – whether they need to change the language, or add a disclosure or a qualifier," adds Beyer.

“Defendant corporations face risks including the cost of litigation, settlement or damages – which can be substantial if the case involves a larger consumer class – and opportunity costs. They also risk reputational damage that can result from the claims, even if the claims aren't proven.”



Kaitlyn Beyer
Associate, New York



Other emerging risks

"Bluewashing"

Akin to greenwashing, "bluewashing" refers to companies deceptively overstating their commitment to social, ethical or human rights standards while failing to implement substantive changes on those fronts. The term derives from the United Nations' blue flag, and refers to companies that joined the UN Global Compact without adopting its sustainable and socially responsible policies. Many corporate signatories of the Compact were later found to have done little, if anything, to adopt the sustainable and socially responsible policies it called for. Examples of developments regarding bluewashing risk include:

- **EU:** The same growing legal framework being built around greenwashing also applies to bluewashing, meaning social and ethical claims are attracting more supervisory scrutiny. "The consumer goods and retail sectors are particularly exposed to such risks because supply chains are complex and consumer messaging is high-volume," says Tatschner. "Claims regarding ethical sourcing, fair labour or responsible supply chains can be attacked as misleading by consumers, NGOs and occasionally investors if they are not tightly evidenced and governed."
- **Australia:** While no regulatory proceedings have yet been initiated on bluewashing grounds, retailers have been pursued by NGOs in pre-discovery proceedings focused on potential human rights violations in their supply chains. Many supply chain and human rights disclosures are not mandatory in Australia but come with the potential upside of broader market appeal. However, voluntary disclosure also comes with the risk of, for instance, suppliers being scrutinised. "Businesses need to be sure to balance supply chain transparency with ongoing supply chain diligence," says Draper.

“Businesses need to be sure to balance supply chain transparency with ongoing supply chain diligence.”



Ryan Draper
Counsel, Sydney

"Stock drop" claims

A "stock drop" claim is a form of group shareholder litigation brought against a listed company by its shareholders and former shareholders who allege that they have suffered losses due to a drop in the company's share price caused by incorrect or misleading public statements coming to light. The UK has seen a marked increase in these claims in recent years due, in large part, to the expansion of the litigation funding market.

One example, of an ongoing claim in the UK courts, which sees stock drop risk dovetail with bluewashing risk, is that brought by shareholders and ex-shareholders against the fashion retailer Boohoo plc. The claim relates to a 40% share price drop it suffered in 2020, wiping £1.5 billion off its market value. The share price drop took place after a Sunday Times investigation which purported to have uncovered unethical labour practices and wage exploitation in its Leicester-based factories. The claim centres on alleged misleading statements by the retailer about its supply chain and employment practices.

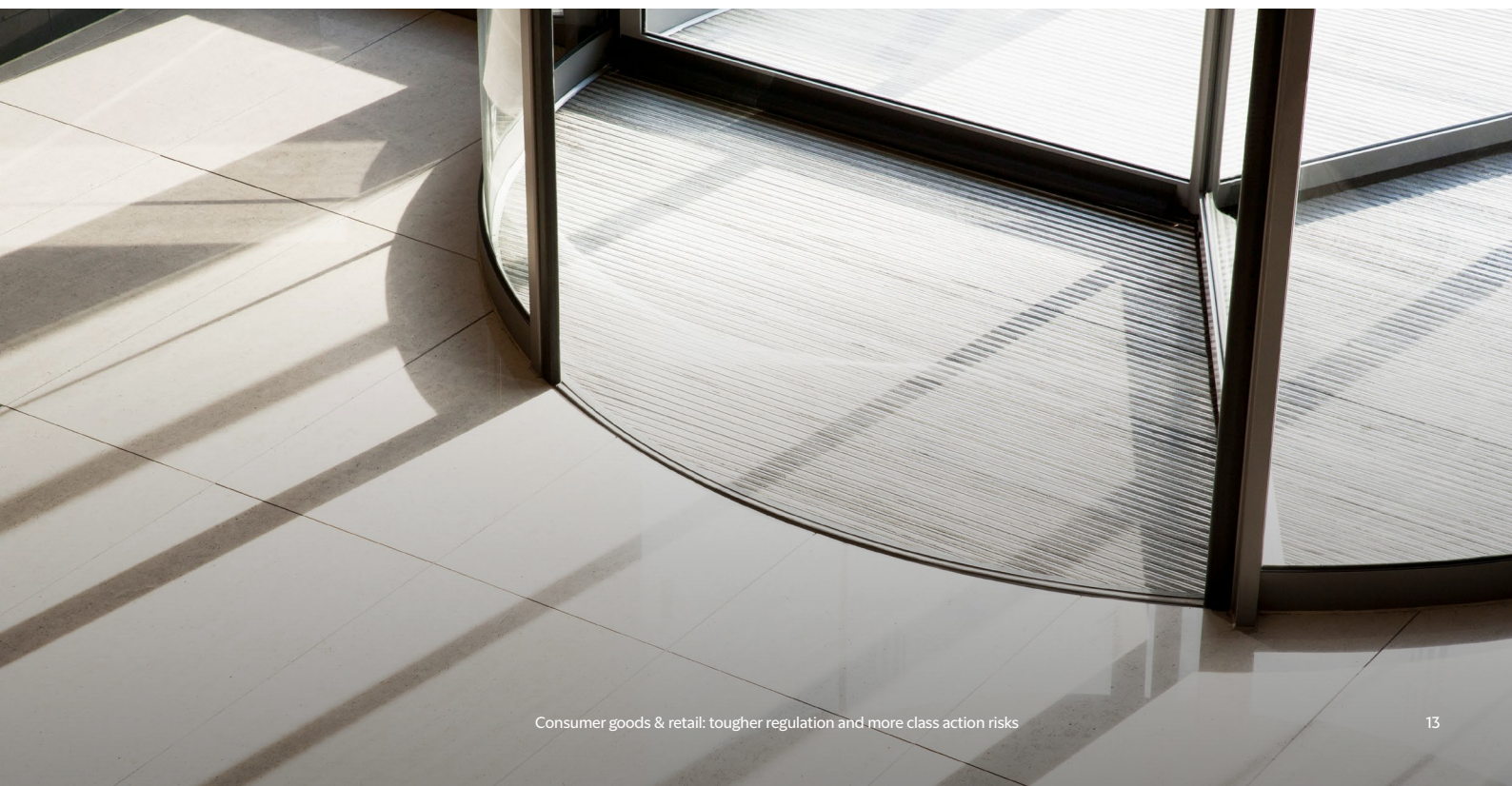
The Boohoo claim underscores the need for companies to conduct thorough due diligence of both their direct and indirect supply chains, including subcontractors. It also highlights the importance of senior management training that emphasises directors' responsibilities in approving disclosures and the potential personal liabilities they may face if a company's public statements are found to be misleading or untrue.

"It remains to be seen whether we'll see other examples of bluewashing cases in the UK. This is very much one-of-its-kind at the moment," says Zandi. "But one thing for sure is that companies, in particular listed companies, are under ever-increasing scrutiny to stand behind and comply with statements they make to the market about the standards they adhere to."

"It remains to be seen whether we'll see other examples of bluewashing cases in the UK. This is very much one-of-its-kind at the moment."



Danielle Zandi
Senior Associate, London



Contacts



Kaitlyn Beyer
Associate, New York

kaitlyn.beyer@cliffordchance.com
+1 2128805697



Ryan Draper
Counsel, Sydney

ryan.draper@cliffordchance.com
+61 289228583



Michael Grenfell
Partner, London

michael.grenfell@cliffordchance.com
+44 2070061199



Danielle Morello
Counsel, Washington, DC

danielle.morello@cliffordchance.com
+1 2029125088



Priscilla Tatschner
Partner, Frankfurt

priscilla.tatschner@cliffordchance.com
+49 6971991282



Danielle Zandi
Senior Associate, London

danielle.zandi@cliffordchance.com
+44 2070063034

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2026

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.