



The Legal 500 Country Comparative Guides

Brazil

CLASS ACTIONS

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in Brazil.

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BRAZIL

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

In Brazil, there are many proceedings through which it is possible to protect the interests or rights of determined or undetermined groups of individuals or legal entities. For instance, we have civil public action ("CPA"), proceeding foreseen on the Federal Law No. 7,347/1985 ("CPA Law"), as well as the procedure provided for in the Brazilian Consumer Defence Code ("CDC") (arts. 91 to 100 of the CDC). There are other procedures specially created to defend class causes: the popular action (Federal Law no. 4,717/1965 and art. 5, inc. LXXIII of the Brazilian Federal Constitution "CF"), the class writ of mandamus (art. 5, inc. LXX, of the CF), the administrative improbity action (Federal Law no. 8,429/1992) etc.

Among the options mentioned above, it is worth discussing more about the CPA. According to Article 81, items I, II and III, of the CDC, the three types of rights that may be protected through a CPA are: i) diffuse rights, because they belong to the entire collectivity without distinction (for example, the defence of the environment); ii) collective rights, which refer to a specific group of people, individuals or legal entities (members of an association of consumers who suffered harm) and iii) homogeneous individual rights, which is considered to be all those who have suffered injury from the same event (consumers who suffered harm caused by a product or service, even when it was used according to the instructions).

2. Who may bring class action or collective redress proceeding? (e.g. qualified entities, consumers etc)

According to Article 5 of the CPA Law, the Brazilian entities with legal standing to file a CPA are: the Public Prosecutor's Office, the Federal Government, the States, the Federal District, the Municipalities, the Public Defenders' Office, the government agencies, the public

companies, the foundations, the government-controlled (private) companies and the associations that: (i) have been created for at least one year; and (2) have among their institutional objectives the protection of the environment, the consumer, the antitrust system, free competition, the historical heritage, the touristic heritage, the artistic heritage, the landscape heritage and the aesthetic heritage.

3. Which courts deal with class actions or collective redress proceedings?

The organisation of the Brazilian judicial system is a constitutional matter (articles 92-126 of the CF), and there is a fundamental internal division of the Specialised Courts and the Ordinary Courts. The three main divisions of the Specialised Courts are the Labour Courts (articles 114-117 of the CF), the Electoral Courts (articles 118-121 of the CF) and the Military Courts (articles 122-124 of the CF), each with its own instances and appellate courts.

The Federal Courts are organised into Judicial Sections, with Lower Courts where single judges act. The jurisdiction of the Federal Courts of first instance is established in Article 109 of the CF, and in civil matters, it is essentially restricted to the cases in which the Federal Government or certain entities and public bodies linked to it have an interest (article 109, I of the CF).

The appeal jurisdiction is attributed, by regions, to the Federal Courts (i.e., the Federal Regional Courts) and is established in Article 108 of the CF.

The jurisdiction of the State Courts is residual. It is not defined case by case in the CF and encompasses all the matters that are not under the jurisdiction of the Federal Courts.

Thus, the state courts have jurisdiction to try and judge appeals against judgments rendered by first-instance state judges, except when the state judge has decided on a matter of federal jurisdiction (exception provided in Article 108 of the CF).

In conclusion, there is no specialised court to judge class actions in Brazil. So, in theory, any Brazilian court could deal with class actions or collective redress proceedings.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

In general terms, the CPA may protect any right that transcends the merely individual sphere. The claim may have a broad scope and may be declaratory or contain an order to pay/to do. Article 1 of the CPA Law establishes the following:

Art. 1 The provisions of this Law govern, without prejudice to popular action, claims for liability for moral and property damages caused:

1. to the environment;
2. to the consumer;
3. to goods and rights of artistic, aesthetic, historical, touristic and landscape value;
4. to any other diffuse or collective interest;
5. by infringement of the antitrust system;
6. to the urban zoning system;
7. to the honour and dignity of racial, ethnic or religious groups,
8. to public and social heritage.

This is not an exhaustive list, due to the express provision in item IV: “any other diffuse or collective interest”. At the same time, Article 21 was added to the law, providing that the rules of Title III of the CDC applied to the “defence of diffuse, collective and individual rights and interests”. As a result, the CPA Law was extended to encompass (a) all other types of general and collective rights not previously listed and (b) for the first time, certain individual rights (namely, homogeneous individual rights).

Thus, as noted above, the CPA Law and the CDC now are jointly applied for the defence of diffuse, collective and homogeneous individual interests.

5. Are there any limitations of types of claims that may be brought on a collective basis?

Under Brazilian law, there are some legal restrictions on the scope of the civil action, which cannot be filed to discuss tax issues, social security contributions, etc. (Sole paragraph of article 1 of the CPA Law), nor to declare unconstitutionality of a law or a normative act.

6. How frequently are class actions brought?

According to a study made in 2021 by the National Council of Justice (available [here](#), pages 82-83) between 2014 and 2019 the class 65, which deals with civil CPAs, had a total of 222,786 new cases filed in state courts and 29,233 filed in federal regional courts.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

Most of the time, class action or collective redress litigations include competition, data breach, shareholder, commercial contract, consumer and product liability and environmental, social and governance (ESG) claims. The main potential emerging business risks that may be the focus of such litigation are:

Environmental damage: companies that engage in activities that cause harm to the environment, such as dam collapses, oil spills or pollution, may face class actions brought by affected individuals, communities, or small businesses. These actions can seek compensation for property damage, health effects, loss of profit and other harms.

Cybersecurity breaches: with the increasing frequency and severity of cyber-attacks, businesses that fail to adequately protect customer data may face class actions. These actions can arise from breaches of personal information such as credit card numbers, Social Security numbers, and health records.

Misleading or deceptive advertising: companies that engage in false or misleading advertising practices may face class actions brought by consumers who were deceived or harmed by such practices. This can include claims related to product quality, safety, or effectiveness, amongst others.

8. Is your jurisdiction an “opt in” or “opt out” jurisdiction?

Under Brazilian law, the individual use of a final decision granting the claim [to file an individual proceeding] in a class action is voluntary. The member of the group may opt out from the class action and then file an individual claim. Similarly, if they have already filed the individual claim and are informed that the CPA is pending, they may continue to take their individual claim forward. They may also opt not to proceed with the liquidation and enforcement of the final decision issued in the CPA.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

The claimant – with standing to sue – must file a complaint before the Court with attribution to judge the claim. Such complaint must comply with the provisions set in the Brazilian Code of Civil Procedure and inform: I – the court to which it is addressed; II – the surnames, first names, marital status, existence of a civil union, profession, the Individual or Corporate Taxpayer Identification Number, email address, address of domicile and residence of the plaintiff and of the defendant; III – the factual and legal grounds of the claim; IV – the pleading and its specifications; V – the amount under discussion; VI – the evidence which the plaintiff intends to prove the truth of the alleged facts; and VII – the plaintiff's option to hold, or not, a conciliation or mediation hearing. In addition to that, the claimant must produce within the complaint all the documents that are indispensable for the claim.

10. What remedies are available to claimants in class action or collective redress proceedings?

Brazilian law does not differ remedies applicable for individual claims to class action or collective redress proceedings and allows the most common remedies such as injunctions, interlocutory reliefs, imposition of affirmative or negative obligations to compel the defendant to do something or to refrain them from doing harmful conducts. In addition, the defendants may be subject to payment of a daily fine should they not comply with the decisions rendered by the judge. Redress and compensation are the most common remedies set in the final decisions.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

Brazilian laws do not provide specific rules for punitive damages but there is substantial case law defending the applicability of punitive damages for such claims, especially for deep pockets and repeated offenders.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

These proceedings are subject to trial before a judge and in case of appeals, the responsible for the judgements

are higher courts but never juries.

13. What is the measure of damages for class actions or collective redress proceedings?

Damages are usually measured by the estimated cost of the economic damages suffered by the claimant. As for non-economic/moral damages, judges usually refer to case law and consider the circumstances of the case, the extent of culpability of the offender, the magnitude of the violation and the economic capacity of the parties. There are also different methodologies for specific matters such as environmental, health, and labour.

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

Brazilian system of collective proceedings is recognised through specific laws such as the CDC and the CPA Law and therefore subject to the Brazilian judicial system previously explained. The Brazilian Supreme Court has already recognised in 2021 that it is unconstitutional to limit the territorial reach of decisions rendered in CPAs. However, there are some debates over cross-border claims and the impacts associated with them.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

There are no specific limits to the nationality or domicile of claimants but the criteria that determine the jurisdiction are expressly established in the CPA Law (place of the damage) and in the CDC (extent of the damage).

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

Brazil has its own system of collective proceedings that does not rely on international law. Nevertheless, Brazil has ratified or incorporated many international treaties such as the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters or the American Convention on Human Rights.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

Article 5, § 6th, of CPA Law supports the settlements under CPAs since it allows legitimate entities to enter into an agreement named Conduct Adjustment Declaration (Termo de Ajustamento de Conduta, TAC). Its terms are wide, and the mechanism commonly compromises the signatory defendant to cease such conducts appointed by the claimant entity as wrongful and to compensate damages in general to the collectivity (e.g., environmental) or caused to third parties individually (e.g., material damages, loss of profits, immaterial damages). It is an enforceable title as set in forth by law.

However, no express legal provisions state rules applicable to settlement under the CPA hypothesis in general, applying the general rule under the Brazilian Civil Code and Brazilian Civil Procedure Code. TAC has a settlement nature and is a very usual mechanism to solve the lawsuit faster in order to provide compensation more effectively. Its terms are negotiated with the claimant representative of the collectivity. Its general clauses are applied to benefit all victims (people suffering damages and/or affected by the wrongful act) when CPA is grounded in homogeneous individual rights. The Court ratifies the settlement, and it becomes an enforceable title. Consequently, the CPA will be extinguished on the merits (BCPC, article 487, item III, "b"). Mainly due to the number of individuals owning rights under CPAs involving homogeneous individual rights, the enforcement is individual and shall be fulfilled by a specific proceeding linked to the CPA.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

The Court in which the CPA is ongoing shall analyse the terms under the settlement to confirm if its content is in accordance with the law and the interests involved (BCC, articles 840 to 850 and BCC, article 190). If positive, the collective settlement will be ratified by the Judge and then be enforceable for all individuals with rights covered by the CPA.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

No legal provisions state the regulatory assistance in

CPA involving matters under their knowledge. Considering the regulatory entities have the specific competence to judge such matters on the merits (i.e., antitrust/competition, financial market, or telecommunications, as an example), some CPAs are fulfilled based on an unappealable regulatory decision issued by the regulator's entities recognising damages to the collectivity.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

As explained, the CPA is a restricted judicial mechanism to protect diffuse, collective, and homogeneous individual rights. It is not possible to state the CPA as a judicial mechanism to enforce ESG matters specifically. Still, discussions on corporate liability for environmental and social damages would be possible.

21. Is litigation funding for class actions or collective redress proceedings permitted?

Litigation funding of CPAs is not compatible with the Brazilian legal system, considering the legitimacy to fulfil is restricted to entities created and maintained for the purpose of helping the collectivity to pursue their rights, such as the Public Defenders' Office and the Public Prosecution Office (CPA Law, article 5).

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

Funding to raise a CPA is not allowed before Brazilian law. However, conditional fee agreements are admissible and commonly used in Brazil.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

The "adverse costs" due to a dismissed lawsuit that would be applicable under the general Brazilian civil procedure applies to CPAs – except in cases of bad faith (art. 18 of the CPA Law).

24. Are there any proposals for the reform

of class actions or collective redress proceedings? If so, what are those proposals?

There are ongoing judgments of proposals to amend the CPA Law before the Brazilian National Congress. The Proposals n. 4.778/20, n. 4.441/20, and n. 1.641/21 aims for substantial amendments under the CPA Law or a new law, which will be jointly judged. Please find some highlighted points under these Proposals.

Proposal n. 4.778/20 aims to (a) summon the regulator agency before the CPA to file its opinion on matters under their knowledge and supervision (article 12, §§1st and 2nd); (b) expressly provide the hypothesis of settlement under CPAs (article 13); (c) waiver of individual lawsuits to be contemplated by the judgment rendered before a CPA (article 9, sole paragraph); and (d) do not recognise the limitation interruption due to the CPA filing and determine there is no suspension of individual lawsuits due to the CPA filing (article 26, §4th and 5th).

Proposal n. 4.441/20 aims to (a) allow the regulator agency to act as amicus curiae before the CPA, as well as determine the regulator agency summon for an opinion on the matters under their knowledge and which could impact the sector under its supervision (article 18, §3rd); (b) expressly provide rules to guide settlement

under CPAs (articles 27 to 42); (c) the suspension of individual lawsuits until the CPA judgment (article 16) unless the individual expressly opts for keep his individual lawsuit and do not be contemplated for eventual granting under the CPA (§2nd), as well as do not revert his option until the judgment under the individual lawsuit (§3rd); and (d) the limitation interruption for individual and collective lawsuits due to the CPA filing, based on the same facts (article 15).

Proposal n. 1.641/21 aims to (a) determine the regulator agency summon for an opinion on the matters under their knowledge and which could impact the sector under its supervision (article 20, §1st); (b) provide specific rules to guide the Court on the analysis of the settlements guaranteeing the purpose of CPA interests protected (articles 14, 15, and 37 to 43); (c) the suspension of individual lawsuits from a pre-trial decision under the CPA judgment (article 23), since the individual expressly opts for keep his individual lawsuit and do not be contemplated for eventual granting under the CPA (§2nd), as well as do not revert his option until the judgment under the individual lawsuit (§3rd); (d) the limitation interruption for individual and collective lawsuits due to the CPA filing, based on the same facts (article 18); and (e) extend the CPA on the subject which is "preventing or compensating any nature of diffuse, collective or individual rights", including collective immaterial compensation (article 4).

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