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England & Wales: Law and Practice

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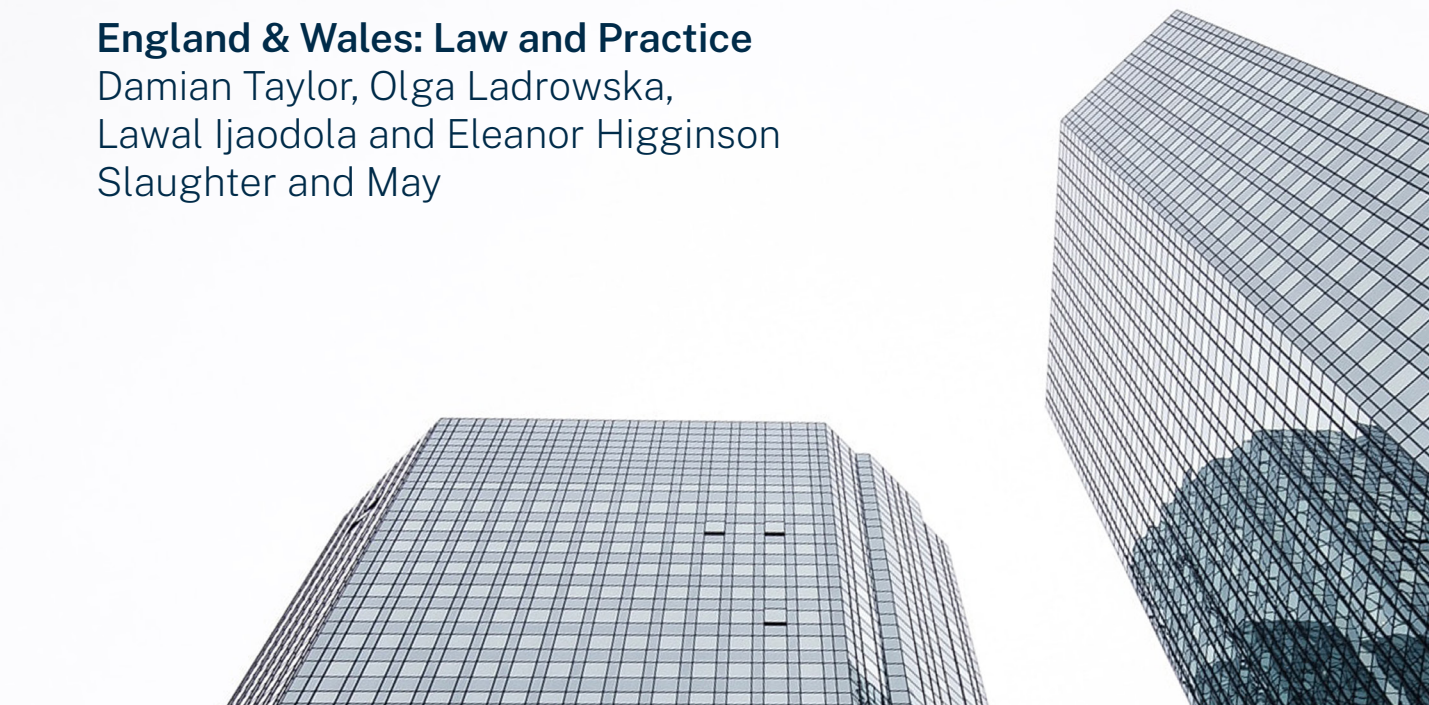
Slaughter and May



ENGLAND & WALES

Law and Practice

Contributed by:
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Slaughter and May

Contents

Slaughter and May is a leading international law firm advising on high-profile transactions and contentious issues. The disputes and investigations practice is trusted by companies, financial institutions and governments from around the world to advise them on their most complex and reputationally sensitive disputes. The lawyers provide an end-to-end service, advising on risk mitigation, litigation, ADR and investigations, and on the interplay between them. Recent highlights include advising BHP in its defence to claims arising out of the collapse of the Fundão Dam in Brazil, and successfully advising Standard Chartered in the recent LIBOR transition test case. The firm also advises truck manufacturer MAN in the trucks cartel follow-on damages litigation, one of the largest sets of competition law claims to go before the courts.

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1. General

1.1 General Characteristics of the Legal System

The legal system of England and Wales is a common law system. The law is derived from both binding judicial decisions and legislation. Legislation usually takes precedence over binding judicial decisions if there is any conflict.

The legal process in England and Wales is adversarial, which means that cases are presented to a judge as disputes between opposing parties. The judge determines cases based on the evidence submitted by the litigants (and not his or her own inquiries).

The legal process is conducted through both written and oral submissions. Written submissions set out key issues in the proceedings; as such, they are particularly important at an early stage in the proceedings. The written pleadings and skeleton arguments from both sides will be the judge's first introduction to the case. Written submissions are supplemented by oral advocacy in the courtroom (at trial, oral advocacy includes opening and closing submissions as well as cross-examination of factual and expert witnesses).

1.2 Court System

The court system of England and Wales is hierarchical, with lower courts being bound by the decisions of higher courts. The UK Supreme Court is the highest court, followed by the Court of Appeal, High Court and County Court for civil (non-criminal) cases. Criminal cases start in the Magistrates' Courts or the Crown Courts, both of which are positioned below the Court of Appeal in the hierarchy. There are also tribunals, which cover specialist matters such as employment, competition and tax law.

Civil cases are primarily heard in the County Court or the High Court, depending on the complexity and value of the case. The High Court handles more complex and higher value cases, typically those involving claims over GBP100,000. It is divided into three divisions:

- the King's Bench Division;
- the Chancery Division; and
- the Family Division.

Cases related to contracts and torts (civil wrongs) are generally heard in the King's Bench Division, while the Chancery Division handles matters concerning business, insolvency, intellectual property, trusts, property or land and

probate law, among other things. The Family Division deals with cases concerning family law.

The Business and Property Courts are specialist courts within the High Court, constituted of several judges from the King's Bench Division and the Chancery Division. These courts handle specialist business and international civil disputes, including cases involving commercial, property, technology and construction law.

The basic timetable for proceedings is dictated by the Civil Procedure Rules, but the courts have reasonable discretion in setting deadlines for each stage of the litigation process. While the courts are focused on effective case management and are keen to avoid litigation delays, it is not uncommon for straightforward commercial cases to take over a year to reach trial, with more complex cases taking significantly longer.

In the Business and Property Courts, the Shorter Trials Scheme provides a faster route to trial, potentially enabling litigants to move from filing to judgment in under a year. Alternatively, the Flexible Trials Scheme offers an approach that allows litigants to adapt trial procedures to better suit their specific cases.

1.3 Court Filings and Proceedings

The legal system of England and Wales operates on the basis of "open justice", which means that justice should be done in the open, with courts of all levels accessible to the public and the media.

In practice, this means that, absent exceptional circumstances, the public can access key court documents, such as court judgments and pleading documents, including a claim form, particulars of claim and defence. The public can also access witness statements relied on in court. Furthermore, the public can apply for permission from the court to access additional documents, including documents attached to a pleading or witness statement, expert reports and skeleton arguments. Applicants are required to explain why they are seeking access and how granting such access would advance the principle of open justice. In determining such applications, the court will perform a balancing exercise, weighing up the principle of open justice on the one hand against any risk of harm arising from disclosure.

The principle of open justice also means that, as a general rule, hearings are held in public, and anyone is free to attend. In exceptional circumstances, such as cases concerning especially confidential or commercially sensitive material, litigants may make an application for a private or "closed court" hearing. However, such cases are rare.

1.4 Legal Representation in Court

Legal representation in the courts of England and Wales involves two primary rights:

- the right of audience, which is the right to appear before and address a court, including calling and examining witnesses; and
- the right to conduct litigation, which covers the right to issue legal proceedings, the commencement, prosecution and defence of those proceedings, and the carrying out of necessary administrative tasks for a case.

The general principles governing these rights are that:

- only barristers have the right of audience in the High Court and higher courts such as the UK Supreme Court, as well as solicitors who

have obtained additional qualifications granting them higher rights of audience;
- solicitors without higher court qualifications have rights of audience in lower courts only (those below the High Court);
- only solicitors have the right to conduct litigation, as well as barristers who have specific authorisation;
- litigants in person, who appear in court without legal representation, have both rights of audience and rights to conduct litigation in respect of their cases in all courts; and
- foreign lawyers registered with the Solicitors Regulation Authority may assist in the conduct of litigation under the instructions and supervision of a person who is authorised to conduct litigation, and may have rights of audience for such litigation if the proceedings are held in Chambers in the High Court or a County Court.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Until the 1990s, the funding of litigation by a third party was generally prohibited for reasons of public policy, particularly when done in expectation of a profit. A series of judgments and statutory reforms mean that it is now permitted in civil litigation and has become an important feature of the legal landscape.

Litigation funding is not subject to mandatory, statutory regulation, but a system of self-regulation has been in place since 2011. Members of the Association of Litigation Funders, an independent body, agree to abide by a code of conduct that obliges funders to, among other things, maintain adequate levels of capital, maintain confidentiality and take reasonable steps to ensure that claimants receive independent legal advice on the terms of proposed funding agreements. To the extent funders engage in conduct that is contrary to the code of conduct or otherwise undermines the integrity of the justice system, their arrangements may be held to be unenforceable.

Litigation funding has grown significantly in the last decade, fuelled in large part by the establishment of new rules that facilitate the bringing of class actions by those affected by breaches of competition law. Mindful of consumer protection, the government has commissioned a review into third-party litigation funding, which is due to report in summer 2025. It may recommend greater regulation of the sector.

2.2 Third-Party Funding: Lawsuits

Third-party funding can be used across a variety of different types of claims, including breach of contract claims, professional liability claims, intellectual property claims, tax disputes and shareholder disputes, although claims generally need to be of a certain value to make funding profitable. Before agreeing to fund a claim, litigation funders will typically assess the claim's viability, which will involve considering factors such as the skill and experience of the legal team, the value of the claim, the proportionality of legal costs and the likelihood of successful enforcement.

Litigation funding is becoming increasingly common in areas such as large class actions, particularly for claims involving competition or environmental law, where claimants may either be unable to afford litigation costs or wish to share the financial risk.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is, in principle, available to both claimants and defendants. However, in practice it tends to be offered primarily to claimants (or defendants with a counterclaim), as the funder's return will be taken from any award of damages or settlement amount in the claimant's favour.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There are no set maximum and minimum amounts that a third-party funder will fund. Each funder will make its own assessment of a case's merits, the potential quantum of damages, the potential costs of litigating the case and the potential adverse costs liability. The funder will typically consider these questions in the context of its own portfolio, cost of funding, risk appetite and target rate of return. It will then formulate a funding proposal accordingly.

2.5 Types of Costs Considered Under Third-Party Funding

A third-party funder will usually fund all legal expenses associated with the claim and its enforcement that are incurred from the date of the funding agreement, including the costs of lawyers' fees (including both the solicitor and barrister teams), any disbursements and any tribunal or court fees.

Any liability on a funded party to pay its opponent's costs in the event the claim fails will usually be the subject of a specialised insurance policy. That insurance policy will usually be acceptable as security for an opponent's costs.

2.6 Contingency Fees

Two types of contingent or conditional fee arrangement (ie, agreements between a litigant and their lawyer specifying that legal fees will only become payable in certain circumstances) are permitted in civil litigation. Both are regulated by statute, and arrangements that do not comply with the relevant rules will generally be unenforceable.

- Conditional fee agreements (CFAs) are made between a litigant (either claimant or defendant) and their solicitor. In its purest form, a CFA provides that a solicitor becomes entitled to payment for their work only if a threshold of success (however defined) is met; otherwise, the solicitor receives nothing. In practice, most CFAs are structured more flexibly, so that a litigant pays their solicitor at a discounted rate throughout the life of a case. If the success threshold is met, the solicitor becomes entitled to top up their fees to the undiscounted rate, plus a success fee of up to 100% of the undiscounted rate.
- Damages-based agreements (DBAs) are made between a claimant and their solicitor. The solicitor's entitlement to payment arises only if the claim succeeds, and their payment is calculated as a percentage of the damages award or settlement payment (subject to a cap of 50%).

In practice, the flexibility of CFAs makes them significantly more common in the market than the more restrictive DBAs.

2.7 Time Limit for Obtaining Third-Party Funding

There are no formal time limits within which third-party funding should be obtained.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Before commencing proceedings, litigants are expected to follow the guidelines on pre-action conduct. These rules are contained in pre-action protocols that apply to certain types of dispute (such as debt claims and professional negligence claims). There is also a general practice direction, called the Practice Direction on Pre-Action Conduct and Protocols, which applies if there is no specific pre-action protocol for a particular dispute.

The requirements between the different protocols vary. Broadly speaking, the protocols require that the claimant is expected to provide written details of the claim to the defendant before commencing an action, including a summary of the relevant facts and the claimant's desired remedy. The defendant is expected to respond to the claimant within a reasonable period, setting out which facts are accepted or disputed and any counterclaim the defendant wishes to bring. Claimants and defendants are expected to disclose to each other any significant documents that are relevant to the dispute.

The pre-action requirements seek to ensure that litigants have sufficient information to understand each other's case and generally to support efficient management of proceedings. They also encourage litigants to consider alternative dispute resolution options to achieve settlement.

Although compliance with the pre-action protocols is not mandatory, there can be significant consequences for failure to comply. The court may take non-compliance with the protocols into account when awarding costs or interest rates on amounts due, or when considering case management directions.

3.2 Statutes of Limitations

Claimants must bring their claims within the prescribed periods of limitation; otherwise, the claims become time-barred. Most limitation periods for different causes of action are laid down in the Limitation Act 1980. The basic limitation rule for claims based on breach of contract, tort or breach of trust is six years. Other limitation periods include one year for defamation claims and 12 years for claims arising out of deeds. A claim to enforce an arbitral award is usually subject to the basic six-year limitation rule.

The limitation period usually commences when the cause of action arises. Therefore, in contract claims, the limitation period runs from the date of the breach of contract. In tort claims, the accrual of the cause of action will vary depending on the tort in question. In negligence claims, for example, the cause of action typically arises on the date on which the damage is suffered. However, in certain circumstances, such as where the claimant could not reasonably have discovered their right to bring a claim due to fraud or deliberate concealment by the defendant, the commencement of the limitation period begins when the claimant becomes aware of the fraud or concealment, or when they reasonably could have become aware of it. The limitation period stops running when the claim form issuing proceedings is received by the court. Litigants may also be able to suspend or extend a limitation period by agreeing a standstill agreement.

3.3 Jurisdictional Requirements for a Defendant

The rules on jurisdiction have changed following the UK's withdrawal from the EU. Generally, for civil or commercial proceedings initiated on or before 31 December 2020, the courts apply the rules in the Recast Brussels Regulation, while for proceedings initiated after 31 December 2020

the courts apply either the common law rules or the rules set out in the Hague Convention on Choice of Court Agreements 2005.

Under the Recast Brussels Regulation, the court generally has jurisdiction over defendants domiciled in England and Wales. The court also has jurisdiction in circumstances where there is an exclusive jurisdiction agreement in favour of England and Wales, or if a close connection can be demonstrated between the defendant or the dispute and England and Wales.

Under the common law rules, the court has jurisdiction if:

- the claim form is validly served on the defendant whilst it is physically present in England and Wales;
- the defendant voluntarily submits to the jurisdiction of the courts of England and Wales;
- the defendant is served outside the jurisdiction and falls within one of the specific situations where the court's permission is not required (eg, the claim relates to a contract containing a jurisdiction clause in favour of the courts of England and Wales); or
- the court gives permission for service out of the jurisdiction under one of the jurisdictional "gateways" specified in the Civil Procedure Rules, which usually necessitates evidencing a connection between the defendant or the dispute and England and Wales, and satisfying the court that England and Wales is the appropriate forum for the claim.

Under the common law rules, the court has discretion to refuse to exercise its jurisdiction if it considers there is another more appropriate forum for the dispute to be heard.

In addition, the UK is a party to the Hague Convention on Choice of Court Agreements 2005, which requires contracting states to give effect to exclusive jurisdiction agreements designating the courts of other contracting states, and to recognise and enforce any resulting judgments.

3.4 Initial Complaint

Court proceedings are commenced when the court issues a claim form at the claimant's request. The claim form typically includes the names and addresses of the litigants, a concise statement of the nature of the claim, and the remedy sought by the claimant.

More detailed particulars of claim may be contained in the claim form or set out in a separate document. A court fee is also payable to issue proceedings, the amount of which depends on the value of the claim.

The claim form/particulars of claim may be amended at any time before they are served on any other party. After service takes place, the documents can be amended only with the written consent of all the other litigants or the permission of the court.

3.5 Rules of Service

The Civil Procedure Rules set out the rules of service in England and Wales. The defendant is formally notified of proceedings by the claim form and particulars of claim being served on it. The claim form must be served on a defendant in England and Wales within four months of its issuance. Particulars of claim should be served with the claim form or 14 days after service of the claim form. The claimant may apply to the court for an order to extend the timeframe for the service of the claim form. A claim form can be served by either the court or the claimant, either personally on the defendant, through the

defendant's solicitor, at the defendant's usual or last known address or an agreed address, or in another manner permitted by the court.

A party located outside England and Wales can be sued if there is a basis for the court to establish jurisdiction over that party (see **3.3 Jurisdictional Requirements for a Defendant** regarding the grounds on which the court may exercise jurisdiction). In many cases where a claimant seeks to sue a defendant outside England and Wales, the court's permission is required before the claim form can be served. For a defendant outside England and Wales, the claim form must be served within six months of the proceedings being issued.

3.6 Failure to Respond

If the defendant fails to acknowledge service or file a defence within the prescribed time after being served with the claim form, the claimant may request a default judgment. If the court decides to enter a default judgment, the claim will be decided in the claimant's favour without consideration of the merits.

To set aside or vary the default judgment, the defendant would need to apply to the court. The application will only be granted if the defendant can show that:

- the judgment was wrongly entered;
- they have a real prospect of successfully defending the claim; or
- there is another good reason why the judgment should be set aside or varied or the defendant should be allowed to defend the claim.

3.7 Representative or Collective Actions

Representative or collective actions are permitted through various frameworks, namely representative actions, group litigation orders (GLOs) and the court's general case management powers.

Whether group proceedings are brought on an opt-in or opt-out basis depends on the type of group litigation structure.

The framework for representative actions allows one or more individuals to bring a claim on behalf of a group of individuals with the same interest in the claim. Representative actions are structured on an opt-out basis, where individuals automatically become part of the group unless they specifically opt out. There is no need for members of the represented class to be joined as parties to the action nor to be identified on an individual basis.

GLOs provide for the case management of claims that give rise to common or related issues of fact or law. GLOs are brought on an opt-in basis where individuals must express their intent to join the action and authorise the representative to act on their behalf.

The court also has the power to consolidate proceedings and manage claims together, using its case management powers. The courts have managed some of the largest multi-party actions using their case management powers.

For competition litigation, a collective action regime has been introduced in the Competition Appeal Tribunal. These types of collective proceedings require certification to proceed. The certification mechanism is designed to remove frivolous and unmeritorious claims and to enable the Competition Appeal Tribunal to determine the class representative and class definitions and whether the proceedings should proceed on an opt-in or opt-out basis.

3.8 Requirements for Cost Estimate

The Solicitors Regulation Authority's code of conduct provides that clients should be given the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred. It is generally considered good practice to provide clients with a cost estimate of the potential litigation at the outset and continue to update them about the cost position throughout the proceedings.

The court is required as part of the "overriding objective" to manage cases at proportionate cost. Where cost management rules apply, litigants will be required to prepare and exchange costs budgets detailing their projected costs for the litigation. In cases where cost management rules do not apply, the court has the power to require litigants to file costs estimates during the proceedings.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible to make interim applications before trial or substantive hearing of a claim. There are a number of different types of interim application. Litigants may use interim applications to seek to obtain remedies from the court. In these circumstances, the court has broad discretion to grant whatever remedy it considers appropriate, including specific disclosure, interim injunctions or interim payments. Interim applications may also be used to deal with case management matters.

4.2 Early Judgment Applications

Litigants can make applications for early judgments, including by way of summary judgment or strike out.

Litigants may apply for summary judgment on the whole of a claim or on a particular issue if they can establish that there is no real prospect of succeeding on the claim or issue, or of successfully defending the claim or issue, and that there is no other compelling reason why the claim or issue should be disposed of at trial. Demonstrating "real prospect" is quite a low threshold in practice and has been interpreted to mean "not fanciful". In some circumstances, summary judgment can also be proposed by the court of its own initiative under its broad case management powers.

A claimant may apply for summary judgment only after the defendant has filed either an acknowledgment of service or a defence, unless otherwise permitted by the court. A defendant may apply for summary judgment at any time in the proceedings.

An application notice for summary judgment must set out or attach any written evidence on which the applicant relies. Typically, a respondent to the application must be given at least 14 days' notice before the hearing of a summary judgment application. Any written evidence must usually be filed and served at least seven days before the hearing in the case of a respondent's evidence, or three days before the hearing in the case of an applicant's evidence in reply.

Another way to achieve early judgment is to apply for a claim, or part of it, to be struck out where it lacks reasonable grounds, constitutes an abuse of the court process or violates a rule, practice direction or court order. While the appli-

cation can be made at any stage of the proceedings, it should be brought as early as possible; the court may exercise its discretion to refuse an application if it is made too late in the litigation process.

See also **3.6 Failure to Respond** for an explanation on obtaining default judgment.

4.3 Dispositive Motions

As set out in **4.2 Early Judgment Applications**, summary judgment, strike-out and default judgment applications are common dispositive motions made before trial.

Where the defendant considers that England and Wales is not the appropriate forum to hear a claim, it can apply to challenge the court's jurisdiction.

Litigants may also apply for a preliminary issue hearing, in which a specific issue of law and/or fact is resolved prior to the main trial, to assist the court in handling the proceedings in a just and efficient manner. Litigants may apply for a preliminary issue hearing, or the court may order one of its own initiative under its broad case management powers.

4.4 Requirements for Interested Parties to Join a Lawsuit

A person not originally named as a claimant or defendant may be joined to an existing claim if it can be shown that it is desirable to add the new party so that the court can resolve all the matters in dispute, or that there is an issue involving the new party and an existing litigant which is connected to the matters in dispute and it is desirable to add the new party so that the court can resolve that issue. An application to the court, supported by evidence, must be made by either an existing litigant or the interested person seeking to be joined to the proceedings.

4.5 Applications for Security for Defendant's Costs

A defendant can obtain an order of security for costs against the claimant or, in certain circumstances, a third party if it can demonstrate that one of the specified grounds set out in the procedural rules applies and the court is satisfied that, having regard to all the circumstances of the case, it is just to make such an order. Specified grounds include where:

- the claimant is resident outside the jurisdiction (but not resident in a state bound by the Hague Convention 2005);
- the claimant is a company and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so; or
- the claimant has taken steps in relation to its assets that would make it difficult to enforce an order for costs against it.

Security for costs applications can only be made during court proceedings, not prior to formal proceedings being initiated.

4.6 Costs of Interim Applications/ Motions

The court has broad discretion as to whether costs of interim applications are payable, the amount of those costs and when they are to be paid.

Costs orders might be made following the determination of an interim application, depending on the circumstances of the case. The general rule is that the court will make a summary assessment of costs at the conclusion of a hearing lasting not more than one day using the statement of costs filed and exchanged by the litigants

before the hearing. In some cases, the court may order that costs should be determined by way of detailed assessment.

4.7 Application/Motion Timeframe

The timeframe for the court to deal with an application will vary depending on several factors, including the nature and complexity of the application, the court's availability, and whether the application is deemed urgent.

Interim applications can be made at any stage of the proceedings. However, they should be made without delay as soon as it is appropriate to do so. To assist the court, where possible, applications should be made in time to be heard at any pre-scheduled hearings.

In some cases, applications are decided "on the papers", meaning the court reviews the written submissions and decides whether to grant the application without holding a hearing. This process can be quicker, but timelines still vary.

5. Discovery

5.1 Discovery and Civil Cases

Discovery is commonly referred to as "disclosure" in England and Wales, and is available in civil cases.

There are detailed rules governing disclosure, which vary depending on the nature of the case and on which court is hearing the case. Broadly, there are two main disclosure regimes.

- Under the regime that has been in force for some time, there are a range of disclosure options. However, in practice, courts tend to order litigants to provide "standard disclosure". This requires the litigants to disclose the existence of all documents within their control on which they rely, which adversely affect their own or their opponent's case, or which support their opponent's case.
- In contrast, under a relatively new regime (which applies to disputes heard in the Business and Property Courts), litigants are encouraged to provide a relatively limited number of key documents at an earlier stage in the litigation process, and will only be permitted to have more extensive disclosure if the court considers it appropriate. Any order for extended disclosure must be reasonable and proportionate.

The disclosure process is carried out by the litigants and their legal representatives, who must comply with directions from the court. Litigants are expected to work together to ensure that disclosure is kept within sensible limits; failure to do so may result in adverse cost consequences. Where there are disputes about the adequacy or scope of disclosure, litigants can apply to the court for directions.

5.2 Discovery and Third Parties

It is possible to apply to the court to obtain disclosure from a non-party. The applicant must demonstrate that such disclosure is necessary to fairly resolve the case or reduce costs.

In certain circumstances, litigants can apply to the court for a "Norwich Pharmacal" order, which compels a third party who has become mixed up in a wrongdoing and is in possession of relevant information to disclose specific documents or information. It is often used before formal proceedings are commenced, in situations where a litigant needs to identify appropriate defendants, obtain evidence or trace assets, and cannot proceed without the information held by the third party.

A witness summons can also be used to require an individual to produce documents to the court.

5.3 Discovery in This Jurisdiction

As set out in **5.1 Discovery and Civil Cases**, there are detailed rules governing disclosure. The exact scope of disclosure will vary from case to case and will depend on the directions given by the court.

In terms of key principles, the starting point is that each litigant must disclose documents within their control that are relevant to the case, even if those documents are adverse to their position. However, reasonableness and proportionality are key (and the latter is given particular emphasis in the regime governing disclosure in the Business and Property Courts). The need for co-operation between litigants has also been repeatedly emphasised by the courts.

It is important to note that documents disclosed during proceedings may not be used subsequently by the other litigant unless the document has been read or referred to in open court or a public hearing, the court grants permission, or the litigant who disclosed the document agrees to such use.

5.4 Alternatives to Discovery Mechanisms

This is not applicable, as disclosure mechanisms apply in England and Wales (see **5.1 Discovery and Civil Cases**, **5.2 Discovery and Third Parties** and **5.3 Discovery in This Jurisdiction**).

5.5 Legal Privilege

There are two types of legal professional privilege: legal advice privilege and litigation privilege.

Legal advice privilege applies to confidential communications between a lawyer and their client that have come into existence for the dominant purpose of giving or receiving legal advice.

Litigation privilege applies to confidential communications between a lawyer and their client, or between either of them and a third party, for the dominant purpose of preparing for existing or reasonably contemplated litigation.

For the purpose of legal professional privilege, in-house lawyers are not treated differently from lawyers in private practice, provided their communications are made for a privileged purpose.

5.6 Rules Disallowing Disclosure of a Document

The most common basis for withholding a document from inspection by the other side is legal privilege (see **5.5 Legal Privilege**). In addition, documents may be withheld from inspection on the basis of public interest immunity. In certain circumstances, documents may also be withheld from inspection on the basis of proportionality.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctions require litigants to perform a specified act (mandatory injunctions) or refrain from performing a specified act (prohibitory injunctions). Injunctions can be temporary orders made with the purpose of regulating the position between litigants pending trial (interim injunctions) or final orders usually made at trial, which continue with no limitation of time (perpetual injunctions).

There are various types of injunctions, including:

- freezing injunctions (restricting dealings with assets);
- search orders (permitting a search of property);
- anti-suit injunctions (restraining foreign legal proceedings); and
- proprietary injunctions (protecting property and trust assets).

Injunctions are granted at the court's discretion where it is "just and convenient" to do so.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive relief can be obtained relatively quickly, especially in urgent circumstances where a litigant believes that immediate action is necessary to prevent irreparable harm. The High Court has a system of out-of-hours judges who are available to consider urgent applications when the court is not in session. This typically includes evenings, weekends and public holidays. The applicant may be required to submit their application via telephone or in writing, detailing the grounds for the injunction and the urgency of the matter. The judge will then review the application and make a decision, often very quickly – sometimes within hours.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief can, in very limited circumstances, be granted on an ex parte basis (ie, without notice to the respondent) – eg, in urgent situations where notifying the other party may risk causing irreparable harm or undermining the purpose of the injunction. This might apply in relation to an application to freeze an asset that is on the verge of being removed from the jurisdiction.

A party applying for injunctive relief on an ex parte basis must meet certain criteria, such as providing full and frank disclosure to the court. Orders made on an ex parte basis typically have a short lifespan, as the court will promptly schedule a subsequent hearing to allow both parties to present their arguments.

6.4 Liability for Damages for the Applicant

An applicant may be held liable for damage suffered by the respondent if the respondent successfully discharges the injunction, regardless of whether it was obtained after notice to the other party or on an ex parte basis.

Subject to some limited exceptions, the court will require an undertaking in damages when it grants an interim injunction. The purpose of the undertaking is to provide a safeguard for the respondent who may be unjustifiably prevented from doing something they were entitled to do. An applicant may sometimes be required to "fortify the undertaking", including by providing security or by requiring another person to honour the undertaking.

6.5 Respondent's Worldwide Assets and Injunctive Relief

In some limited circumstances, injunctive relief, such as freezing orders, can be granted against the worldwide assets of the respondent. These orders aim to prevent the respondent from dissipating their assets. However, the enforcement of such orders outside England and Wales will depend on the domestic laws of the jurisdiction where the assets subject to the injunction are located.

6.6 Third Parties and Injunctive Relief

Injunctive relief may be obtained against third parties in certain circumstances, provided that

those parties are subject to the jurisdiction of the court. By way of example, freezing orders may be made against a third party that controls assets on behalf of a person that is the subject of a freezing order.

6.7 Consequences of a Respondent's Non-compliance

Breach of the terms of an injunction can lead to a party being held in contempt of court, which can lead to fines, confiscation of assets and imprisonment.

7. Trials and Hearings

7.1 Trial Proceedings

Trials typically involve oral submissions and presentation of evidence (from both factual and expert witnesses). The trial begins with each litigant presenting their opening oral submissions, which are typically supplemented by written submissions that are filed with the court shortly before the commencement of trial. Following this, each litigant presents their factual and expert witnesses for examination-in-chief and cross-examination. During examination-in-chief, witnesses usually adopt their prior written witness statements, and experts adopt their reports. During cross-examination, the other side has an opportunity to test and seek to undermine the evidence given in chief.

Following the examination of witnesses, litigants provide closing oral submissions, which (similarly to opening oral submissions) are typically supplemented by written closing submissions. A final judgment is then delivered by the court.

7.2 Case Management Hearings

Shorter hearings for applications or case management issues may involve only oral submissions, without any presentation of evidence.

The court will usually order one or more case management conferences (CMCs) before trial. The first CMC will usually take place after the exchange of pleadings. At a CMC, the court may, after hearing submissions from the litigants, give directions regarding the timetable to trial, among other things.

7.3 Jury Trials in Civil Cases

Jury trials are generally not available in most civil cases. However, there are some exceptions, including defamation cases, where a jury trial may be requested.

7.4 Rules That Govern Admission of Evidence

The admission of evidence is governed by case law, statute and the rules of court. The underlying principle of admissibility is relevance, which means that the evidence goes to the issues in dispute. If evidence is relevant, it will be admissible, unless it falls within an exclusionary rule or is excluded by the court in the exercise of its discretion. There are a number of reasons why evidence might be excluded, including that it is opinion evidence provided by a witness who is not sufficiently qualified to provide that opinion, or that it is subject to legal privilege.

7.5 Expert Testimony

Expert testimony may be permitted by the court if it is reasonably required to resolve issues in the proceedings. A litigant intending to rely on expert testimony must seek the court's permission. Typically, each litigant engages their own experts, who provide opinions based on their relevant expertise. However, in some circum-

stances the court may order the use of a single joint expert.

The overriding duty of an expert is to assist the court on matters within their expertise; this duty surpasses any duties owed to the litigant(s) that instructed the expert. The expert's opinions are usually set out in a report, which is filed with the court and served on the other litigant. Where each litigant has engaged their own expert, the experts may be subject to cross-examination at trial.

The court may appoint a person known as an "assessor" to assist the court with issues where the assessor possesses relevant skills and experience.

7.6 Extent to Which Hearings Are Open to the Public

As stated in **1.3 Court Filings and Proceedings**, the principle of "open justice" in the legal system of England and Wales requires that court filings and proceedings are open to the public, subject to certain exceptions.

7.7 Level of Intervention by a Judge

The level of intervention by a judge during a hearing or trial can vary, but judges typically play an active role in managing the proceedings to ensure that the hearing or trial is run smoothly and fairly. Judges may request clarifications, provide guidance or pose questions to counsel, litigants and witnesses.

The judges have discretion as to whether to deliver a judgment at the end of a hearing or trial, or to reserve it for a later date. In practice, judgments on some applications may be given at the end of the hearing, but judgments following trials are generally reserved for later.

7.8 General Timeframes for Proceedings

As stated in **1.2 Court System**, the courts have discretion in setting deadlines for each stage of proceedings, considering factors such as the complexity of the case and the court's availability. It is not uncommon for straightforward commercial cases to take over a year to reach trial, with more complex cases taking significantly longer.

The typical length of a trial will depend on the complexity of the case and the number of factual and expert witnesses. Trials can take anywhere from a few days to many months.

8. Settlement

8.1 Court Approval

Court approval is usually not required to settle a civil case. However, there are some exceptions, including cases involving a child or protected party.

Approval is required to settle opt-out collective proceedings in the Competition Appeal Tribunal. The litigants must show that the settlement terms are just and reasonable. The collective settlement regime is a fast-developing area of law, with the first collective settlement being approved in 2023.

8.2 Settlement of Lawsuits and Confidentiality

The fact that litigants have settled proceedings will usually be a matter of public record, not least because the claim will need to be stayed or withdrawn. However, the terms of the settlement can remain confidential. If the litigants wish the proceedings to be stayed except for the purpose of enforcing the terms of the settlement, they can use a so-called Tomlin order to record the

terms of their agreement. A Tomlin order allows litigants to include the terms of their agreement in a confidential schedule.

8.3 Enforcement of Settlement Agreements

The process of enforcing a settlement agreement depends on the procedure followed when the settlement agreement was entered into. If the original claim has been discontinued, a party seeking to enforce the terms of the settlement agreement will need to issue a new claim in order to do so. If there is a Tomlin order in place and the original claim has been stayed, the enforcement process involves the original claim being restored and an order being obtained to compel compliance with the relevant settlement term. If the order is made and breached, enforcement can follow in the usual way, including by an application for contempt of court.

8.4 Setting Aside Settlement Agreements

Settlement agreements, as contracts, can be set aside due to factors such as illegality, mistake, misrepresentation, duress and incapacity.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The court has discretion to grant a wide range of remedies to the successful litigant, including damages, declarations, injunctions and specific performance.

9.2 Rules Regarding Damages

The primary objective of damages in commercial cases is to compensate the claimant for the loss suffered and to restore them to the position they would have been in had the wrongful act not occurred. In contract and tort law, the basic rule for damages is that they should place the claimant in the position they would have been in had the contract been properly performed or the tort not been committed.

Punitive damages are not commonly awarded but they may be granted in exceptional circumstances in some tort cases.

There are no specific rules limiting the maximum amount of damages. However, not all losses that flow from a breach of contract or tort will be recoverable. The rules on legal causation, remoteness, mitigation and contributory negligence may restrict, and in some circumstances prevent, any damages being awarded.

In some cases, litigants may agree liquidated damages, which will be a fixed sum payable in the event of breach of contract.

9.3 Pre-judgment and Post-judgment Interest

The court may award both pre-judgment and post-judgment interest to the successful litigant, based on either a contractual agreement or statutory provisions, with specific parameters guiding the applicable rates. The statutory interest rate is typically set at 8% per annum, although courts have discretion to adjust this rate based on the circumstances of each case. Factors such as the conduct of the litigants and the nature of the claim may influence whether interest is awarded and at what level. Post-judgment interest continues to accrue until the full judgment amount is paid, with interest compounding if payment is late.

9.4 Enforcement Mechanisms of a Domestic Judgment

Several mechanisms are available for the enforcement of a domestic judgment, depend-

ing on the type of judgment. Judgments requiring a party to pay money or perform an act can be enforced through, among other things, writs and warrants of control, which permit the seizure of the debtor's assets, as well as through third-party debt orders, charging orders and attachment orders.

9.5 Enforcement of a Judgment From a Foreign Country

Judgments from other jurisdictions are enforceable in England and Wales if they are first recognised by the courts as legal documents. Once recognised, these judgments can be enforced using any procedure available to enforce domestic judgments (see **9.4 Enforcement Mechanisms of a Domestic Judgment**). The procedure for recognising a foreign judgment depends on the country of origin.

The Recast Brussels Regulation simplified the recognition and enforcement of judgments among EU member states, and applies to proceedings instituted before 31 December 2020. Under this regime, judgments issued in one EU member state are recognisable and enforceable in others with only minor administrative steps. However, the recognition of judgments from proceedings issued after 31 December 2020 is governed by non-EU law rules, as outlined below.

Judgments from Commonwealth member states can be recognised under the Administration of Justice Act 1920. Applications to register a judgment under this regime must be made within 12 months from the date of delivery of the judgment, although this period may be extended.

For countries that have reciprocal arrangements with the UK, judgments can be recognised under the Foreign Judgments (Reciprocal Enforcement) Act 1933. Under this regime, the creditor must apply for registration within six years, and demonstrate that the foreign judgment is final, conclusive and for a fixed sum.

For judgments from all other countries, absent any bilateral agreement, recognition is governed by common law. This process requires the judgment creditor to bring an action in the courts of England and Wales based on the foreign judgment.

For judgments where there is a qualifying exclusive jurisdiction agreement in favour of the relevant foreign court, the Hague Convention on Choice of Court Agreements 2005 may apply (see **3.3 Jurisdictional Requirements for a Defendant**).

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

As stated in **1.2 Court System**, appeals from the County Court will normally proceed to the High Court and then to the Court of Appeal, before potentially finally being heard in the UK Supreme Court. In certain circumstances, it is possible to appeal to the court or judge above the one to which the appeal would ordinarily progress, which is known as "leapfrogging".

10.2 Rules Concerning Appeals of Judgments

There are detailed procedural rules governing the appeal process. In most cases, permission to appeal is required. This permission is typically sought from the court whose decision is being appealed or from the court to which the appeal lies.

Permission to appeal will usually only be granted if the appeal has a real prospect of success or if there is some other compelling reason for it to be heard.

10.3 Procedure for Taking an Appeal

The procedure for taking an appeal involves filing a notice of appeal and, where permission is required, an application for permission to appeal. These must be filed within the timeframe prescribed by the court that made the decision appealed against, or otherwise within 21 days from the date of the decision being appealed against. To appeal from the Court of Appeal to the UK Supreme Court, a party must seek permission to appeal within 28 days after the date of the Court of Appeal's decision.

10.4 Issues Considered by the Appeal Court at an Appeal

Generally, the appeal court will only review the first instance decision on the grounds that the judgment was either incorrect – due to an error of fact or law, or the exercise of the court's discretion – or unjust because of a procedural irregularity or other serious issue.

Litigants are expected to raise all relevant points during the original proceedings. However, with the court's permission, there are circumstances in which new points can be introduced on appeal, particularly if these points pertain to new evidence that has become available and could not reasonably have been obtained during the first instance.

10.5 Court-Imposed Conditions on Granting an Appeal

The court can impose conditions when granting an appeal, and these conditions will depend on the circumstances of the case. The court may require the appellant to provide security for costs, impose time limits for submissions, grant a stay of proceedings or limit the grounds on which the appeal can be pursued.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal, the appellate court may allow or dismiss the appeal, either wholly or partially. This may involve upholding the original decision, reversing it, remitting the case or part of it to the lower court, modifying the decision and/or awarding costs. Since the appellate court has general control over the matters covered under the scope of the appeal, it can make any order that it considers the lower court ought to have made regarding those matters.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

The general rule is that "costs follow the event", which means that the unsuccessful litigant is liable to pay the costs incurred by the successful litigant (in addition to its own legal costs). In practice, the court has broad discretion in the matter of costs. As a more unusual example, the court may even order a non-party (such as a litigation funder) to pay costs if it considers that to be appropriate.

Once the court has decided who is to pay costs, the next step is to quantify the amount of those costs. Unless litigants can reach an agreement, the court will assess costs with a view to ensuring that only those that were reasonably (and, in most cases, proportionately) incurred are paid. That means that a successful litigant will never recover all of its costs; in practice, it is very unusual for a litigant to recover more than 70% of its costs.

11.2 Factors Considered When Awarding Costs

In awarding costs, the court will consider factors such as the conduct of the litigants and their compliance with the overriding objective (ie, the rule that cases should be dealt with justly and at proportionate cost). Serious non-compliance can result in an adverse costs order, regardless of who actually wins the case. In addition, in most cases, the court will assess the proportionality of the costs incurred in relation to the value of the case when deciding whether those costs should be reimbursed by the other litigant. In every case, the court will only order that costs that were reasonably incurred will be paid.

11.3 Interest Awarded on Costs

Interest on judgments for costs accrues from the date the judgment for costs is given until it is paid, at the rate of interest set by the court. The statutory interest rate for post-judgment interest is 8% per annum, unless a court orders otherwise.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

ADR is increasingly popular as it can be a more efficient and cost-effective way for parties to resolve their disputes than pursuing court proceedings. A variety of different ADR mechanisms are available to parties to suit their circumstances, including:

- non-binding ADR without the intervention of a third party (eg, negotiation);
- non-binding ADR facilitated by a third party (eg, mediation); and
- binding ADR, where a decision is imposed by a third party (eg, expert determination and adjudication).

For information on arbitration, see **13. Arbitration**.

12.2 ADR Within the Legal System

ADR is typically a voluntary and consensual process agreed between the parties. However, recent developments indicate an important shift in favour of the courts encouraging or, in some cases, ordering parties to use ADR to resolve their disputes outside of the courts.

The Civil Procedure Rules make clear that litigants should consider the possibility of ADR in every case. For example, the Practice Direction on Pre-Action Conduct and Protocols requires parties to consider whether ADR would be suitable for their dispute and, if required by the court, to provide evidence that ADR has been considered. In addition, with effect from October 2024, the overriding objective of enabling the court to deal with cases justly and at proportionate cost includes "promoting or using alternative dispute resolution". The court can stay proceedings to enable litigants to pursue ADR and, as of October 2024, the court's power (previously confirmed in case law) to order litigants to undertake ADR has been codified in the Civil Procedure Rules. The court may also impose costs sanctions on a litigant who unreasonably refuses to engage in ADR or fails to comply with a court order for ADR, regardless of the outcome of the case.

In May 2024, new rules were introduced to make ADR mandatory in the majority of small money claims valued at up to GBP10,000.

12.3 ADR Institutions

England and Wales is home to a number of leading institutions offering and promoting ADR, including:

- the Centre for Effective Dispute Resolution (CEDR), which specialises in mediation, conflict management and ADR services and training; and
- the London Court of International Arbitration (LCIA), which is one of the world's leading international institutions for the administration of arbitration and other ADR proceedings.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Arbitration is primarily governed by the Arbitration Act 1996, which applies to all domestic and international arbitrations where the seat of the arbitration is England and Wales or Northern Ireland. Certain provisions in the Arbitration Act 1996 – such as stays of legal proceedings, enforcement of awards and the English court's powers in support of arbitration – apply even if the seat of arbitration is located outside of England and Wales or Northern Ireland, or if no seat has been designated or determined. In addition, certain areas of arbitration law, such as confidentiality in arbitration, are not codified in the Arbitration Act 1996 and are derived from case law. See the England & Wales chapter in the **International Arbitration Global Practice Guide** for more detail.

The Arbitration Act 1996 provides for the recognition and enforcement of domestic and foreign arbitral awards, as well as the enforcement of arbitral awards under the New York Convention 1958.

13.2 Subject Matters Not Referred to Arbitration

The Arbitration Act 1996 does not define the meaning of arbitrability but, consistent with the New York Convention 1958, it recognises the right of the court to refuse recognition or enforcement of an award where the matter is not capable of settlement by arbitration. While commercial disputes are generally arbitrable, certain matters cannot be settled by arbitration for public policy reasons – eg, actions for bankruptcy and insolvency orders, as well as criminal cases, and employment matters where the employee has a statutory right to be heard by an employment tribunal.

13.3 Circumstances to Challenge an Arbitral Award

Arbitral awards are considered final and binding. Awards can only be challenged in the courts on three limited grounds set out in the Arbitration Act 1996:

- challenge to the tribunal's substantive jurisdiction, including as to the existence or validity of the arbitration agreement, the constitution of the tribunal or the scope of the arbitration agreement;
- challenge on the grounds of a serious irregularity affecting the arbitration proceedings, the award or the tribunal that will cause substantial injustice; or
- appeal on a point of law.

Whilst the first two grounds are mandatory and cannot be contracted out of, appeal on a point of law is a non-mandatory ground that parties can agree to exclude, either in their arbitration agreement or through their choice of arbitration rules. Challenges can be made to either the final award or to a preliminary award on jurisdiction.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The Arbitration Act 1996 sets out a summary procedure for the enforcement of domestic and foreign arbitral awards, which provides, among other things, that an arbitral award may by leave of the court be enforced in the same manner as a judgment or order of the court. The enforcing party will need to apply to the court for permission by submitting an arbitration claim form, attaching a witness statement, the award and the arbitration agreement. This is generally done without giving notice to the other party. If permission to enforce is granted, a judgment will be entered in the terms of the award and the same powers that are available to enforce an ordinary court judgment will be available. Where a party can show that a tribunal lacks substantive jurisdiction to make an award, leave to enforce will be refused.

To enforce a foreign award under the New York Convention 1958, a party should follow the procedure set out in the Arbitration Act 1996. This requires the enforcing party to produce the duly authenticated award or a duly certified copy of the award and the original arbitration agreement or a duly certified copy of it. If an award is in a foreign language, a certified translation of it should also be produced. Enforcement of a New York Convention award may be resisted on the limited grounds set out in the New York Convention 1958 or on public policy grounds.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

One example of a recent proposal for dispute resolution reform is the Arbitration Bill 2024, which seeks to reform the Arbitration Act 1996 and is currently before Parliament. The Bill aims to ensure that the Arbitration Act 1996 remains fit for purpose and continues to promote England and Wales as a leading destination for commercial arbitration. It reflects proposals made by the Law Commission in 2023 following an extensive consultation with legal practitioners, industry bodies and arbitral institutions in the jurisdiction. Following that consultation, the Law Commission concluded that the Arbitration Act 1996 works well and that there is no need for wide-ranging reforms. The reforms in the Arbitration Bill 2024 are therefore confined to a few major initiatives and tidy-up changes, which include introducing a new default provision as to the governing law of an arbitration agreement.

Separately, as explained in **2.1 Third-Party Litigation Funding**, the government has commissioned a review into third-party litigation funding, which is due to report in summer 2025. It may recommend greater regulation of the sector.

14.2 Growth Areas

Group claims and class actions have undergone rapid development and expansion in recent years, fuelled in large part by the introduction of an opt-out class action regime for competition law claims in 2015 (see **3.7 Representative or Collective Actions**) and the rise of third-party funding (see **2. Litigation Funding**). Claimant law firms' and litigation funders' confidence in the competition class action regime is evident from the large number of claims filed in the Competition Appeal Tribunal in recent years.

Crucially, developments are not limited to the competition sphere. Group claims and class actions are becoming an increasingly attractive and feasible means of redress across a broad range of sectors and in relation to a variety of issues. For example, the past few years have

seen a substantial rise in the number of mass tort claims being brought in relation to ESG issues. There has also been an increase in the number of securities actions alleging inaccurate statements in information disclosed by listed issuers to the market.

This growth trend is expected to continue, with claimant law firms and activists finding innovative ways to bring group claims and class actions using the existing legal frameworks.

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