

The LIAISON

Contents and EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Labaton Sucharow is pleased to present *The Liaison: 2022 Year-End Report*. The Firm has been a pioneer in protecting clients' interests in non-U.S. litigation. With its more than 20 years of experience abroad and deep relationships with law firms around the world, Labaton Sucharow has a unique perspective on investment-related issues and recovery opportunities outside the United States. Featured in this edition are:

- Recent filings in non-U.S. securities matters;
- Answers to frequently asked questions regarding non-U.S. actions;
- A summary of a recent investor actions in Scandinavia;
- An overview of the landscape of non-U.S. securities actions; and
- Pending non-U.S. securities actions.

We would be happy to provide more comprehensive assessments and recommendations with regard to any of the topics discussed or highlighted in *The Liaison*.

With Best Regards,

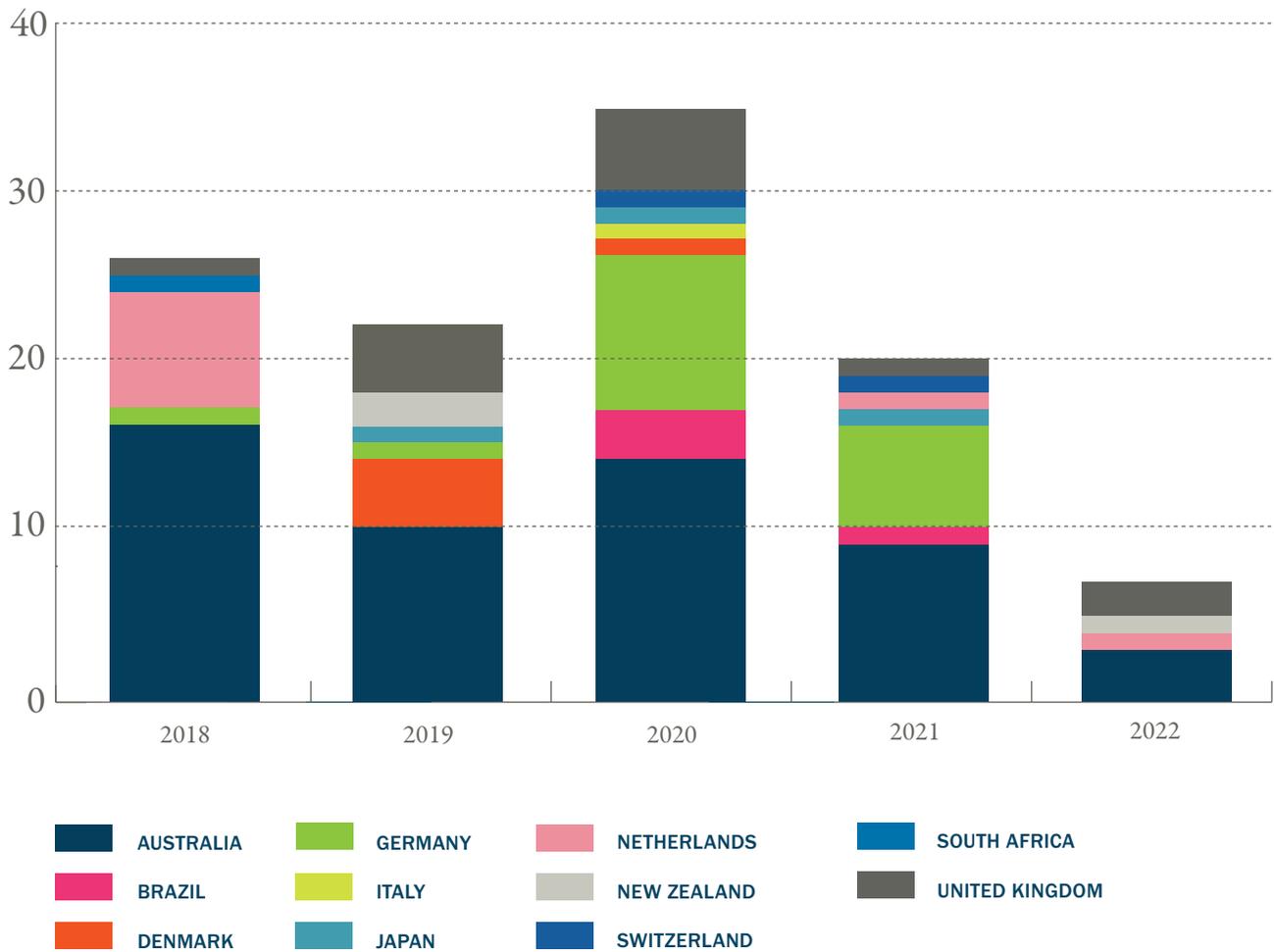
Labaton Sucharow

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Trends in Securities Class Action Litigations OUTSIDE NORTH AMERICA

LITIGATION FILINGS OUTSIDE NORTH AMERICA 2018-2022



*Accurate as of January 2, 2023.

FREQUENT CLIENT QUESTIONS ABOUT NON-U.S. ACTIONS

When an investor **purchases** a company's **shares outside the U.S.**, it is not protected by U.S. securities laws and is thus precluded from joining a class action. This is the result of the 2010 U.S. Supreme Court decision in *Morrison v. National Australia Bank* ("Morrison"). Before *Morrison*, an investor that, for example, bought HSBC shares in London, UBS shares in Zurich, or Toyota shares in Tokyo could generally pursue its legal rights in the U.S. The *Morrison* ruling precludes this option, meaning all investors who buy shares *outside* the U.S. must consider joining non-U.S. investor actions. Below are some of the most frequently asked questions about these proceedings posed to Labaton Sucharow from clients and other institutions.

WHY ARE PENSION FUNDS AND OTHER INSTITUTIONS JOINING NON-U.S. ACTIONS?

Investors join non-U.S. actions for the same reason they join U.S. class actions: to satisfy fiduciary obligations to recover monies lost due to corporate fraud and, for some, to satisfy ESG obligations. It is now common for state, county, and municipal funds – as well as corporate pension funds, asset managers, hedge funds, sovereign wealth funds, and others – to regularly participate in non-U.S. investor actions. This surge in participation has arisen both as institutions have grown more comfortable litigating abroad and as they've seen monies recovered to them from these actions.

WHO ORGANIZES NON-U.S. ACTIONS?

In contrast to the U.S., most overseas jurisdictions prohibit lawyers from financing the cases they work on. Financial entities called litigation funders step in to organize and to provide the capital necessary to pay counsel's fees and the costs of the litigation so that these actions are run on a fully contingent basis.

MUST I TAKE ANY AFFIRMATIVE STEPS TO JOIN?

Yes. Most non-U.S. actions are “opt-in” proceedings, meaning an investor will not be automatically included and, therefore, must affirmatively join at the beginning of a case in order to claim any monies recovered. This is in contrast to U.S. and Canadian class actions, which are “opt out” proceedings, meaning an investor is automatically included without doing anything further.

WHAT MUST I DO TO JOIN?

Most non-U.S. actions only require an investor to sign a few documents to join: (i) a litigation funding agreement, which stipulates, among other things, that the funder will receive a contingent fee for advancing all the costs of the litigation, including counsel fees, and protect claimants against any adverse costs risk; (ii) a retainer with local counsel prosecuting the action; and (iii) a power of attorney, which enables overseas counsel to act on a claimant's behalf.

WHY ARE THERE SOMETIMES MULTIPLE ACTIONS TO CHOOSE FROM?

Because non-U.S. actions are opt-in proceedings, they are not consolidated, as U.S. class actions are. Thus, a defendant can face multiple parallel lawsuits covering the same claims, each initiated and financed by a different litigation funder and prosecuted by separate counsel. This means investors are often required to choose between competing actions. For example, there were up to ten competing actions against Volkswagen arising out of the “dieseldgate” scandal, six separate parallel proceedings against Danske Bank, and up to seven against Steinhoff, in multiple jurisdictions.

EXAMPLES OF CASES WITH COMPETING ACTIONS

CASE NAME	JURISDICTION
PETROBRAS	BRAZIL / NETHERLANDS
SAIPEM	ITALY
SLATER & GORDON	AUSTRALIA
TESCO	UK
TOSHIBA	JAPAN
PORSCHE	GERMANY
OLYMPUS	JAPAN
FORTIS	BELGIUM / NETHERLANDS
SPOTLESS	AUSTRALIA
RBS	UK
VOLKSWAGEN	GERMANY / NETHERLANDS
GLENCORE	UK
STEINHOFF	NETHERLANDS / GERMANY / SOUTH AFRICA
DANSKE BANK	DENMARK
NOVO NORDISK	DENMARK
PETROFAC	UK

SHOULD INVESTORS JOIN THE FIRST ACTION THEY HEAR ABOUT?

No. Oftentimes, an institution may initially hear only about one action, even though other competing actions may soon materialize. Certain litigation funders are quite adept at publicizing their actions or in getting custodian banks to do the work for them. These actions may come to an institution's attention first, but it should wait to determine the universe of choices before actually making one. Indeed, when a funder jumps out immediately to promote an action it may not have

had time to fully develop a litigation strategy, to retain qualified counsel, or to complete the process of sufficiently covering any adverse costs risk. Selecting the right action can affect the amount of money an investor recovers and the risk it undertakes to get it.

In addition to multiple competing actions that are publicly known, there are also private actions that are not publicized, yet investors are still able to join if they know about them. For example, a private UK investor action was launched several

years ago, which ultimately provided claimants with very high per share recoveries and did so in about 18 months from start to finish. The only investors that were able to participate were those invited to join, such as eligible clients of Labaton Sucharow.

SHOULD I JOIN THE ACTION WHERE MY LOSSES ARE THE LARGEST?

Not necessarily. Because each competing action is a separate proceeding, a funder sets its own relevant period and loss calculation methodology. This means one funder can report a \$1 million loss, while another funder reports a \$3 million loss for the exact same claimant. Some funders purposely define relevant periods quite broadly, and this tends to inflate investor losses (*vis-à-vis* a shorter period). Thus, an investor may inaccurately conclude that because Funder A calculated a \$1 million loss and Funder B calculated a \$3 million loss, it will increase its recovery by joining Funder B's action. In truth, where there are competing actions, courts overseeing them will generally harmonize the loss calculation methodologies and relevant periods used, eliminating any benefit from loss calculation arbitrage.

AREN'T I AT RISK FOR ADVERSE COSTS?

Most non-U.S. jurisdictions adhere to the "loser pays" rule, meaning the losing party may be responsible for a portion of the other side's costs. Notwithstanding this risk, in nearly every non-U.S. action, litigation funders protect claimants against this risk, either by (i) purchasing after-the-event ("ATE") insurance or (ii) offering an indemnity or IOU to cover this risk should

it ever arise. In some cases, a combination of the two is used. Protecting against adverse costs is particularly important in higher risk jurisdictions like the UK. It is important for an investor (or its legal advisor) to know how this risk is being covered and whether the protection provided is sufficient. Labaton Sucharow provides this type of analysis for each non-U.S. action.

ARE NON-U.S. ACTIONS DONE ON A CONTINGENT BASIS?

Yes. In general, the litigation funder will take a percentage of any recovery, on a fully contingent basis, and then pay all the costs of the litigation, including counsel fees and the expense of covering the adverse costs risk. Unless an individual investor has a very large loss, it can be difficult for them to negotiate down the funder's fee. Advisors like Labaton Sucharow, who represent a large group of institutional clients, have an advantage because they can negotiate on behalf of the entire group, and many funders have been responsive to this. Investors also must be mindful that fee structures between competing actions may not be wholly transparent. For example, one funder may provide a 30% contingent fee net of all costs (*i.e.*, including the cost of counsel, which is mostly paid as an expense to the case). In contrast, another funder may quote the same 30% contingent fee without explaining that it is not net of costs, which means that the cost of counsel – often the biggest expense – will be taken out first and then the funder will deduct 30% on top of that. Different fee structures generally require modeling to determine the better offering.

WHERE ARE NON-U.S. ACTIONS BEING BROUGHT?

In recent years, the number of non-U.S. actions has grown dramatically, and the jurisdictions in which they are filed now extend throughout Europe, as well as to Brazil, Israel, Japan, Australia, Canada, South Korea, and Taiwan, among others.

There has been a noticeable spike recently in the number of actions launched in certain key jurisdictions like the UK, which in the past few years has become the most active in Europe. This pattern began with the *RBS* action, followed by now resolved actions against Tesco, Lloyds, and several other financial institutions. There are currently pending various actions in London against G4S, Serco, Standard Chartered, RSA Insurance, Barclays, and Glencore. Many other UK-based actions are expected to be brought in the coming months. One of the foundations for this litigation spike was the introduction in 2000 of a new statutory scheme, which has direct parallels to the U.S. federal securities laws. But what really accelerated the pace was a number of successful shareholder litigations, from RBS to Tesco and others. This success influenced litigation funders and English counsel to step forward to provide the capital and the legal expertise to prosecute these claims. This trend has been helped as well by increased regulatory enforcement, from which private actions can build. Finally, the attitude of investors, particularly large UK-based institutions, has shifted from “Why would we participate?” to “Why wouldn’t we?”

WHY DO THE REGISTRATION DEADLINES OFTEN GET EXTENDED?

Funders impose registration deadlines either because there is a looming statute of limitations or, more often, to motivate investors to join their action. Indeed, certain funders regularly provide very tight registration deadlines so that investors feel compelled to join before seeing what alternative choices develop. What frustrates investors further is that often these “hard” deadlines are later extended so that funders can accommodate additional claimants. This makes it difficult to know when to take a funder’s deadline seriously. The best way an institution can determine whether a deadline is real or not is to consult its external legal advisor.

WHAT’S MY TIME BURDEN IN JOINING A NON-U.S. ACTION?

In most non-U.S. actions, an investor plays only a passive role. With few exceptions, there are no documents to produce nor depositions to sit for. In other words, the time investment is quite limited. Many jurisdictions require claimants to initially provide some evidentiary support for their standing to bring a claim. This can generally be done through incorporation documents, a trust agreement, or a certificate of good standing. Depending on the types of documents produced, securing a notarization or apostille may be required by the local court. Beyond that, there is little for a claimant to do. Most investor claims outside the U.S. do not require a demonstration of reliance. One notable exception is certain claims filed in the UK. But even there, claimants can demand as a condition of joining an action that they will not be required to support a reliance claim, meaning not providing documents or witness statements, even from a claimant’s external manager.

ISN'T MY CUSTODIAN COVERING THIS?

No. Some custodian banks will pass along notices they receive from litigation funders, but this won't tell an investor about competing actions to choose from. Custodians also will not calculate investor losses, analyze the risks and rewards of joining a particular action, or register an investor for actions it wishes to join.

HOW WILL I BE NAMED IN A NON-U.S. ACTION?

Until recently, an institution could dictate without objection how it wanted to be named in a non-U.S. action. For example, a state fund was generally named in the claim form as the "State Retirement System." External managers handle day-to-day investment decision making on behalf of many investors, but they do not hold title to the shares, meaning an external manager would rarely be the proper claimant.

Recently, defendants have begun to challenge, on standing grounds, how a claimant is named. This has forced funders and local overseas counsel to insist that a claimant named have (i) legal or beneficial ownership in the shares and (ii) the capacity to enter into legal proceedings. For example, if the relevant statutes or laws governing a state fund stipulate that it is the board, rather than the retirement system itself, that has the power to sue, the board would need to be named in the claim form as "Board of Directors of the State Retirement System."

Business trusts often stipulate that title to shares purchased vest in the trustees. If so, it is the trustees who have the capacity

to bring legal proceedings on behalf of the trust. Thus, the claimant would be named as "[individual trustee names], acting solely in their capacity as trustees of the trust." Notably, because board members and trustees are not named in their personal capacities, the risk of personal liability does not arise.

HOW DO I EFFECTIVELY COVER THE NON-U.S. ACTIONS ARENA?

For years, many investors have engaged outside counsel to monitor their investment portfolios to identify all relevant U.S. actions, calculate their losses, vet each case, and recommend whether to play an active or passive role. After *Morrison*, this traditional form of monitoring is too limited. Investors now need to ensure they have global (*i.e.*, U.S. and non-U.S.) monitoring. But non-U.S. actions are far more complex than their U.S. counterparts, and an institution must take the affirmative step to actually join at the beginning. This means an institution must first know when actions are filed in each relevant jurisdiction and then whether it is eligible to join those actions. The institution must also vet the actions, assessing things like whether the adverse costs risk is adequately protected against, the amount of contingent fees, litigation strategies, the reputation of the relevant litigation funders and counsel, an action's merits, and what documents need to be executed in order to join. Unless an institution has an in-house legal team, the trend has been to outsource this non-U.S. monitoring to capable legal advisors. This ensures an institution is provided with all relevant information and analysis, and that its own time investment remains limited.

FROM *DANSKE* TO *ERICSSON*: INVESTOR LITIGATION IN SCANDINAVIA

Over the past fifteen years, there has been a steady increase in investor actions in Europe. These have the same objective as U.S. shareholder class actions – to recover monies lost due to corporate wrongdoing – but have all been brought as opt-in proceedings, as shareholder class actions remain elusive in Europe. Institutional investors have become familiar with some of the larger actions – think *Steinhoff* in the Netherlands, *Volkswagen* in Germany, *Fortis* in Belgium, and *RBS* in the UK, among others. But what of Scandinavia? Large institutions from Sweden, Denmark, and Norway have led U.S. shareholder actions. Indeed, in the past ten years, Scandinavian lead plaintiffs have been appointed in over 20 cases (more than 75% of these have been Swedish, with three from Denmark and one from Norway). But while investors from this region have been active in the U.S., investor actions on their shores have been comparatively few.

To date, Denmark has been the clear leader, hosting five of the six actions launched in this region (*i.e.*, *Danske*, *Novo Nordisk*, *OW Bunker*, *Pandora*, and *Vestas Wind Systems*) – with Sweden hosting the sixth (*i.e.*, *Ericsson*). These jurisdictions are reliably safe places for investors to litigate, as the adverse costs risk is very low and thus easy for well-capitalized funders to cover. No actions have yet been filed in Norway, or Finland for that matter, even though there are many large multinational companies there (*e.g.*, *Nordea*, *Nokia*, and *Sampo* in Finland and *Equinor*, *DNB*, and *Telenor* in Norway). These statistics raise a number of questions: (i) what types of companies have been targeted in Scandinavia, and what have the charges been; (ii) why has Denmark been the clear leader in this field; and (iii) have the results thus far shown Scandinavia to be an investor-friendly region?

WHO ARE THE TARGETS IN SCANDINAVIAN ACTIONS?

In U.S. class actions, all sorts of publicly traded companies have been sued, from large cap multinationals to smaller companies that trade over the counter. The same has largely been true in Scandinavian actions. Large multinationals like *Ericsson* and *Novo Nordisk* have been sued in Sweden and Denmark, respectively. But so have more regional entities like the Danish bank *Danske*, as well as smaller companies like *Pandora*, *OW Bunker*, and *Vestas Winds*.

There is also no pattern as to the types of misconduct alleged. In the pending *Ericsson* action in Sweden, for example, investors allege that the company engaged in corruption, money

laundering, and the financing of terrorist organizations in Iraq (*i.e.*, *ISIS*) while representing that it complied with applicable laws against these activities. When *Ericsson* finally admitted that it “found serious breaches of compliance rules and the Code of Business ethics” and “identified evidence of corruption-related misconduct” and “payment schemes and cash transactions that potentially created the risk of money laundering,” its shares fell by approximately 15%. Similarly, the pending *Danske* action in Denmark alleges that the largest Danish bank was an active participant in the largest money laundering scheme ever uncovered in Europe, involving more than €200 billion (over \$227 billion) in suspicious payments that passed through *Danske Bank’s* Estonian branch beginning in 2007. That action alleges that despite knowing money laundering activities were taking place for several years, the bank reassured shareholders about its compliance practices and failed to disclose the scope of the regulatory risk it faced because of its illegal practices in Estonia.

Ericsson and *Danske* are unusual in the egregious and criminal conduct allegedly undertaken. The other four Scandinavian actions have more closely followed charges often seen in U.S. class actions. For example, Danish healthcare company *Novo Nordisk* allegedly failed to disclose key information regarding the projected sales of its core insulin products in the U.S. and that pricing pressures were severely impacting the company’s financial results. The action against *OW Bunker*, a Danish fuel supplier, charged that this bankrupt company issued a false prospectus in connection with its initial public offering that failed to disclose

it was engaged in the speculative trading of oil derivatives, rather than merely hedging, as portrayed to investors. In the action against Danish jewelry maker Pandora, the company allegedly misled investors about its future growth prospects, culminating in a profit warning that revised revenue growth from 30% to zero and resulted in the chairman's departure. Finally, in the first large-scale group action brought in Scandinavia, investors in the Danish wind technology developer Vestas Wind Systems alleged that the company concealed its failure to implement international financial reporting standards, which enabled it to improperly recognize revenue on certain contracts earlier than permitted and thus allowed it to significantly boost its guidance for revenue and operating margins.

GREAT DANES?

Nearly 84% of the investor group actions filed in Scandinavia have been brought in Danish courts. This is partially because Denmark has had some fairly egregious corporate scandals in the past decade. It is also due to certain strengths of Danish law. Investor actions in Denmark follow the group action model used throughout Europe, where each claimant is a party but its claim is bundled with other investors into one proceeding. As with other civil law countries, cases are generally decided by a judge rather than a jury. Funders have been drawn to Denmark because of the ability to sue a corporate officer there under a negligence standard, rather than the more arduous grossly negligent or reckless standard that must be met for corporations. Denmark's securities laws also provide a reasonable basis for recovery. The Danish Securities Trading Act ("DSTA") contains

disclosure obligations requiring a company to immediately publish information about significant matters that may affect its share price. Specifically, under the DSTA, an "issuer of securities" is required to, "as soon as possible, disclose publicly inside information . . . if this information pertains directly to said issuer's activities." In addition, issuers are required to "ensure that public disclosure of inside information is effected in such a manner that provides the public with rapid access to said information and that the disclosed information is sufficient for a complete, correct and timely assessment of the inside information to be carried out." Inside information is defined as "information of a precise nature which has not been made public . . . which, if it were made public would be likely to have a significant effect on the market price of one or more securities." Violations of the DSTA are tortious acts entitling shareholders to sue for damages. Importantly, reliance is not an element of an investor's claim.

Notwithstanding some of the structural strengths of bringing a claim in Denmark, it remains an extremely corporate-friendly jurisdiction. Where a national symbol like Danske Bank is the subject of a lawsuit, a desire to protect may infuse judicial determinations. For example, the court in *Danske* relied on only two sources in dismissing the claims against the company's former CEO at trial. The first was a report from the company's own law firm, which admitted it was neither independent nor impartial. The second was the defendant CEO's own testimony, which was also not impartial. Similarly, in the *Pandora* action, the court in the criminal proceedings against the company

elected to rely solely on witness statements from the company's CEO, CFO, and Chairman. Perhaps not surprising, it ruled in favor of the company. In sum, an investor's likelihood of success in Denmark is lower than in other European courts. However, it is still possible that an important case like *Danske* could turn the tide, should the pending action against the company (which is before a different court than the case against Danske Bank's CEO) go in favor of investors. On December 13, 2022, Danske Bank announced it had agreed to pay €2 billion to settle proceedings launched by the U.S. Department of Justice, the Securities and Exchange Commission, and the Danish Special Crime Unit. The impact of this on the pending Danish action against Danske Bank remains to be seen.

IS SCANDINAVIA A LITIGATION SIDESHOW OR A TREND?

It is difficult to conclude at this point that the actions brought thus far in Denmark and Sweden will usher in a tsunami of payouts to investors. Of the six actions, three have been discontinued or dismissed (*Novo Nordisk*, *Pandora*, and *Vestas Wind*). In *Danske*, the case against the bank remains stayed, while *OW Bunker* and *Ericsson* are ongoing. With this mixed record, will Denmark in particular host additional proceedings? Structural barriers currently exist in Norway, where its financial services regulator has taken the position that litigation funding constitutes a financing activity and thus requires a license. An appeal of this position is pending, but if it is upheld, it could act as a barrier to funding there. This would directly impact whether investor actions will be launched. And what of Sweden? It does not have a statutory framework similar to Denmark's DSTA, and investors can only

claim damages if they are the result of a criminal act, such as the alleged conduct at Ericsson. This would severely limit the number of actions that could be brought there.

Scandinavia will never be as robust a litigation forum as the UK, the Netherlands, or Germany – where there are significantly more listed companies of all sizes. And litigation funders are drawn both to stable forums with good investor protection laws and to a pattern of success. The jury is still out on the latter. If either *Ericsson* or *Danske* produce a significant recovery, funders may turn their eyes to this region more frequently.

A SNAPSHOT OF THE NON-U.S. SECURITIES LITIGATION LANDSCAPE

For many years, investors relied heavily on U.S. securities class actions to recover monies lost due to corporate misconduct – irrespective of whether those securities were purchased in the U.S. or abroad. Then, in 2010, the U.S. Supreme Court’s *Morrison v. National Australia Bank* ruling effectively ended this American-focused forum shopping. *Morrison* drew a bright line, precluding investors (including Americans) who bought shares abroad from suing in U.S. federal courts. The result has been that U.S. and non-U.S. investors who buy shares in London, São Paulo, Tokyo, Sydney, Toronto, Frankfurt, and elsewhere, must seek relief *where the shares were purchased*.

Most foreign jurisdictions (except for the U.S., Canada, and certain actions in Australia) require investors to affirmatively “opt-in” to litigation at the beginning. The process for joining a non-U.S. action, as well as the structure, strategy, fees, risks, and time investment, can vary significantly depending on the jurisdiction. Because this panoply of options can sometimes be overwhelming for an investor to navigate, this article provides a snapshot of some of the most popular non-U.S. jurisdictions for investor recoveries and highlights certain key differences and similarities between them.

AUSTRALIA has a sophisticated class action regime at both the federal and state levels that has certain parallels to the U.S. system. Securities class actions (or “representative proceedings”) are common and are led by a “representative plaintiff,” which tends to be a small retail investor, rather than the institutions that typically act as lead plaintiffs in U.S. actions. Unlike the U.S. system, there is no class certification process, no reliance requirement, and no contingency fees (which are prohibited for lawyers, except in the Supreme Court of Victoria or when ordered by a court). There are adverse costs in Australia, but only the representative plaintiff is potentially liable to pay them. Even though it has a class action system, many Australian investor actions remain opt-in proceedings, which still require investors to affirmatively join at the beginning. However, it is increasingly common for these actions to begin as “opt out” proceedings until settlement discussions commence, then the court may require investors to register.

BRAZIL is unique in that investors join arbitrations rather than civil litigation to recover investment damages. This is, in part, due to the decision of the São Paulo Stock Exchange to make submitting to arbitration a condition for an issuer’s admission to premium listing classes. For example, a class action against oil company *Petróleo Brasileiro* (“Petrobras”) could not proceed before Brazilian courts because that company’s bylaws include a mandatory arbitration provision required by the Exchange’s rule. Thus, investors used an arbitration to prosecute the company. Arbitrations in Brazil are “opt-in” proceedings (meaning investors must affirmatively join), have specialized

arbitrators, and tend to move faster than civil actions. Each side selects one arbitrator, with both arbitrators nominating a third person for the panel. Any arbitral award is expected to be enforceable without the need for court recognition in Brazil, or in any country that is a signatory to the New York Convention, including the U.S. Although Brazil is a “loser pays” jurisdiction, the risk to investors is very low, and normally covered by a litigation funder. There is also no reliance requirement and no discovery process.

DENMARK has hosted far more investor actions than any other Scandinavian country. It introduced a class action regime in 2008, but the investor actions brought (*i.e. Danske, Novo Nordisk, OW Bunker, Pandora, and Vestas Winds*) have all been opt-in. This is, in part, because Denmark’s class action device requires class members to post a security or bond (about 3-4% of the claim) at the outset. The Danish Securities Trading Act (“DSTA”) contains disclosure obligations requiring a company to immediately publish information about significant matters that may affect its share price, and violations of the DSTA are tortious acts entitling investors to sue for damages. An advantage of Danish law is that investors can sue a corporate officer under a negligence standard, rather than the more arduous grossly negligent or reckless standard that must be met for corporations. Reliance is not an element of an investor’s claim, but Denmark does have the adverse costs rule, although it is both limited and has been protected against in every investor group action launched there.

GERMANY does not have a class action or group action device for investor lawsuits. Instead, investor claims are subject to KapMuG proceedings. In a KapMuG, investors file their individual actions with the District Court, then apply for a model case proceeding, assuming the case has common legal and factual questions and evidence. The court then chooses one of the plaintiffs who volunteers to serve as a “lead” plaintiff in the model case. At that point, investors have a short window to register their claims and participate in the KapMuG. KapMuG proceedings have been used in many high-profile cases, including *Volkswagen*, *Porsche*, *Bayer*, and *Daimler*. Like many other non-U.S. jurisdictions, a German court can order an adverse costs award in favor of the prevailing party, but this amount is determined by reference to claim value and the number of defendants and is capped by statute. Although there is no formal discovery process, German judges can be very prescriptive and sometimes require detailed documentation regarding an investor’s structure and the source of its authority to sue on behalf of injured shareholders. Reliance-based claims can be pursued as well.

ITALY recently (in 2021) adopted legislation that expands its class action regime to include investors. The new law also enables eligible class members to join a class action even after the court’s favorable judgment on the merits, gives courts expanded powers to gather evidence, and provides for contingency fees, among other changes. Thus far, however, all Italian investor actions have been opt-in proceedings. Adverse costs exist but are very low. There is also no reliance requirement or any burden to produce documents beyond those required to substantiate legal standing to bring a claim.

JAPAN does not currently have a formal class action system, but it does have two procedural mechanisms that allow for group proceedings: (i) joinder of claims and (ii) representative actions. Considered a plaintiff-friendly jurisdiction, large investor group actions have been successfully brought there (e.g., *Olympus*, *Toshiba*) over the past decade. Securities claims rely primarily on the Financial Instruments and Exchange Act (“FIEA”), which imposes strict liability for making a “fake statement on important matters,” or omitting “a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding” in corporate documents such as prospectuses and annual financial reports. With very low adverse costs risks and no reliance requirement for securities claims, Japan is an appealing venue to recover investor losses.

THE NETHERLANDS is an investor-friendly and sought-after jurisdiction for securities fraud claims. A specialized Enterprise Chamber, experienced judiciary proficient in English, and relatively low litigation costs and risks vis-à-vis certain other European jurisdictions have all helped cement this reputation. Although Dutch actions are “opt-in”, the Dutch Act on the Collective Settlement of Mass Damages (commonly referred to as the “WCAM”) provides that parties can consent to an “opt-out” form of settlement. A WCAM settlement is brought before a specific Dutch court (i.e., the Court of Appeal) for approval and, as in the U.S., notice of the settlement is disseminated to relevant investors who are then given the opportunity to exclude themselves. This opt-out mechanism incentivizes both

sides to ensure that the overall settlement terms are fair. There are certain drawbacks to the WCAM, and it has not been frequently used, but it is unique amongst European jurisdictions and has provided a way to resolve certain cases. Adverse costs are part of the Dutch system, but the amount is relatively low and capped by statute. These advantages, plus the fact that there is no reliance requirement for a claim, make the Netherlands another effective option for investors seeking redress abroad.

SWEDEN has a class action system, but it is used largely for consumer-related claims. Large group investor actions have been non-existent until *Ericsson* was launched in 2022. Sweden has no specific statutory regime for securities regulation enforcement relating to the dissemination of false and misleading information. Because of this, the *Ericsson* case will plead tort liability, which presupposes that the aggrieved party has suffered damages because of a criminal act. Although Swedish courts can order adverse costs and the disclosure of specific documents, witness depositions or even witness statements are not permitted. Finally, there is yet no clear answer whether reliance will be required in a securities litigation there.

THE UNITED KINGDOM has become the most active jurisdiction for collective investor actions in Europe. This is due, in part, to a 2000 statutory scheme with direct parallels to U.S. securities laws, but also to the UK's highly sophisticated legal market, as well as more aggressive regulatory enforcement of late. But perhaps the biggest catalyst for the recent batch of actions is the successful resolution of previously filed cases, including *RBS*,

Tesco, and others. The UK also has the highest potential adverse costs of any non-U.S. jurisdiction, making it essential that litigation funders secure sufficient "after the event" insurance, or pledge their own assets to protect investors against this risk. In addition, reliance remains an element of certain securities fraud claims. Where it is pled, investors should be prepared to produce certain documents or negotiate a reliance opt out with the relevant funder.

Since the 2010 *Morrison* decision, investors have been forced to litigate outside the U.S. in order to seek recoveries. Fortunately, although most non-U.S. jurisdictions have key differences to the U.S. model, many have been quite effective at providing a successful litigation forum. Australia, the UK, the Netherlands, and Japan have thus far shown the best results for securing recoveries. Many actions in these and other jurisdictions are currently pending. How they resolve will determine whether the non-U.S. arena continues to be as robust as it has been over the past decade.

ANSELL LIMITED

Domiciled in Melbourne, Australia, Ansell Limited, a global manufacturer of protective industrial and medical gloves, is being investigated by Melbourne based law firm Slater & Gordon Lawyers in relation to the company's downgrade of earnings per share guidance for Fiscal Year 2022, which was announced to the Australian Securities Exchange Ltd. ("ASX") on January 31, 2022. In response to the downgrade, Ansell's share price declined by more than 17%. The potential claim would contend that Ansell made misleading and deceptive statements to the ASX, and further has been in breach of its continuous disclosure obligations during the relevant period. There are no additional details to report at this stage.

TICKER: ANN**ISIN:** AU000000ANN9**RELEVANT PERIOD:** August 24, 2021 to January 28, 2022 (inclusive)**PROPOSED ACTION TYPE:** Class Action**STATUS:** Investigation Phase**REGISTRATION DEADLINE:** TBD

Labaton Sucharow would be happy to discuss with you the specifics of the investigation into Ansell Limited and investors' options for recovery abroad.

**THE STAR ENTERTAINMENT
GROUP LTD.**

Two class actions against gambling and entertainment company, The Star Entertainment Group Limited (“Star”), are pending before the Supreme Court of Victoria in Australia. The class actions allege that during the relevant period, Star made misleading representations about its systems and processes for compliance with anti-money laundering and counter-terrorism financing obligations. In October 2021, a joint investigation by news program *60 Minutes*, *The Sydney Morning Herald* and *The Age* uncovered alleged links to money laundering, organized crime, foreign interference, and fraud. The investigation cited a 2018 KPMG audit report, which was presented to the board’s audit committee and set out deficiencies in Star’s systems and processes, specifically, that it had “inadequate resourcing in place to operate the AML/CTF Program” and that its risk assessment system “does not consider terrorism financing as required by the AML/CTF Act.” After the joint investigation was published, Star’s share price declined approximately 23% (\$0.98) in a single day of trading on October 11, 2021. A public inquiry was conducted, and a report was presented to the NSW Independent Casino Commission chief, who publicly declared in 2022 that Star had allowed money laundering and organized crime to infiltrate the casino, and took “deliberate steps” to cover their tracks, a conduct that continued even after the public inquiry was initiated. Star was later found unsuitable to operate its

TICKER: SGR**ISIN:** AU000000SGR6**RELEVANT PERIOD:** March 29, 2016 to March 16, 2022 (inclusive)**PROPOSED ACTION TYPE:** Class Action**STATUS:** Filed in 2022**REGISTRATION DEADLINE:** TBD

casino in Sydney after the inquiry and fined AU\$100 million by the Queensland government with a special manager appointed to oversee its casinos.

Labaton Sucharow would be happy to discuss with you the specifics of the investigation into The Star Entertainment Group Limited and investors’ options for recovery abroad.

NEW NON-U.S. ACTIONS 2022

CASE NAME	COUNTRY
ALITA RESOURCES LTD.	AUSTRALIA
ANSELL LIMITED	AUSTRALIA
FLETCHER BUILDING LIMITED	AUSTRALIA
INSURANCE AUSTRALIA GROUP LIMITED	AUSTRALIA
MEDIBANK PRIVATE LTD	AUSTRALIA
IRB BRASIL RESSEGUROS SA	BRAZIL
H2O SIDE-POCKET FUNDS	FRANCE
DWS GROUP GMBH & CO. KGAA	GERMANY
WIRECARD AG (EY)	GERMANY
WIRECARD AG (STICHTING WIRECARD INVESTORS CLAIM)	GERMANY
BANCA CARIGE SPA (MARTINGALE RISK)	ITALY
ABN AMRO BANK N.V.	NETHERLANDS
FOREIGN EXCHANGE BENCHMARK RATES (STICHTING FX CLAIMS) (ANTITRUST)	NETHERLANDS
KONINKLIJKE PHILIPS NV	NETHERLANDS
THE A2 MILK COMPANY LIMITED	NEW ZEALAND
TELEFONAKTIEBOLAGET LM ERICSSON	SWEDEN
BOOHOO GROUP PLC	UNITED KINGDOM
BOOHOO GROUP PLC (WOODSFORD)	UNITED KINGDOM
BT GROUP PLC	UNITED KINGDOM
GLENCORE PLC	UNITED KINGDOM

*Based on data compiled by Institutional Shareholder Services Inc.'s Securities Class Action Services site. Accurate as of January 2, 2023.



Non-U.S. Securities Actions LAUNCHED IN 2022

NEW NON-U.S. ACTIONS 2022

CASE NAME	COUNTRY
INDIVIOR PLC	UNITED KINGDOM
LONDON METAL EXCHANGE (NICKEL TRADING)	UNITED KINGDOM
PETROFAC LTD.	UNITED KINGDOM
RECKITT BENCKISER GROUP PLC	UNITED KINGDOM
ROLLS-ROYCE HOLDINGS PLC	UNITED KINGDOM
THE GO-AHEAD GROUP PLC	UNITED KINGDOM

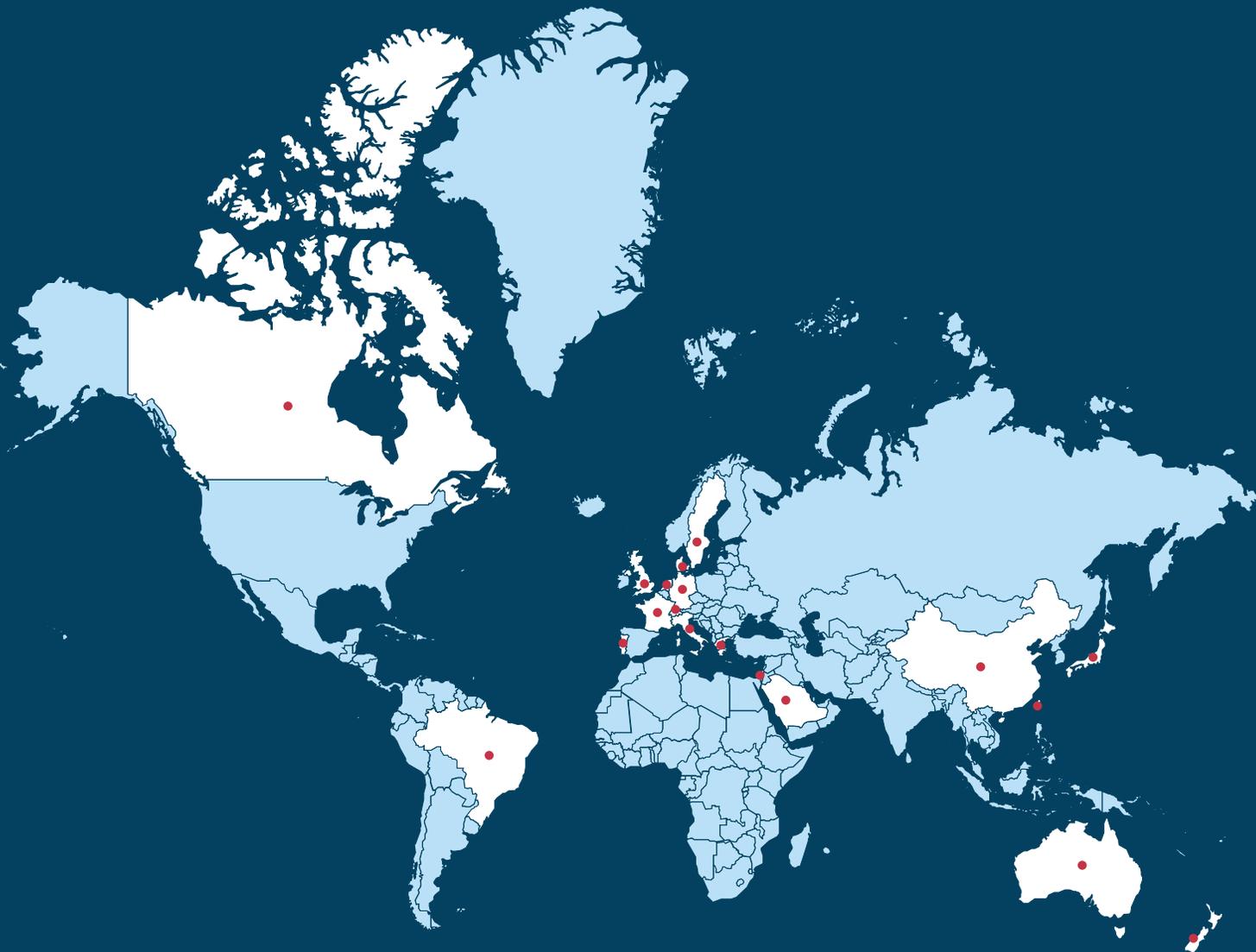
NEW NON-U.S. ACTIONS 2022 BY JURISDICTION

AUSTRALIA 5 | BRAZIL 1 | FRANCE 1 | GERMANY 3 | ITALY 1 | NETHERLANDS 3 | NEW ZEALAND 1 | SWEDEN 1 | UNITED KINGDOM 10

TOTAL 26

*Based on data compiled by Institutional Shareholder Services Inc.'s Securities Class Action Services site. Accurate as of January 2, 2023.

Global LITIGATION SNAPSHOT



SECURITIES ACTIONS ARE PENDING IN THE
FOLLOWING NON-U.S. JURISDICTIONS:

- AUSTRALIA
- BRAZIL
- CANADA
- CHINA
- DENMARK
- FRANCE
- GERMANY
- GREECE
- ISRAEL
- ITALY
- JAPAN
- NETHERLANDS
- NEW ZEALAND
- PORTUGAL
- SAUDI ARABIA
- SWEDEN
- SWITZERLAND
- TAIWAN
- UNITED KINGDOM

LABATON SUCHAROW'S NON-U.S. SECURITIES LITIGATION PRACTICE IS DEDICATED TO ANALYZING POTENTIAL CLAIMS IN INTERNATIONAL JURISDICTIONS AND OFFERING ADVICE ON THE RISKS AND BENEFITS OF PROCEEDING WITH LITIGATION IN NON-U.S. FORUMS.

OUR LAWYERS ARE AVAILABLE TO ADDRESS ANY QUESTIONS YOU MAY HAVE REGARDING NON-U.S. SECURITIES LITIGATION. PLEASE CONTACT THE LABATON SUCHAROW LAWYER WITH WHOM YOU USUALLY WORK OR A MEMBER OF OUR NON-U.S. LITIGATION TEAM.



MARK S. WILLIS PARTNER
EMAIL: mwillis@labaton.com
TELEPHONE: 571.332.2189



HUI CHANG OF COUNSEL
EMAIL: hchang@labaton.com
TELEPHONE: 212.907.0648

THANK YOU
