Labaton Sucharow

2021 YEAR-END REPORT

The LIAISON

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Contents and EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Labaton Sucharow is pleased to present *The Liaison: 2021 Year-End Report.* The Firm has been a pioneer in protecting clients' interests in non-U.S. litigation. With its nearly 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;
- Interviews with experts in non-U.S. investors actions;
- Prospects for future litigation in Asia;
- Summary of recently-announced action in Australia; 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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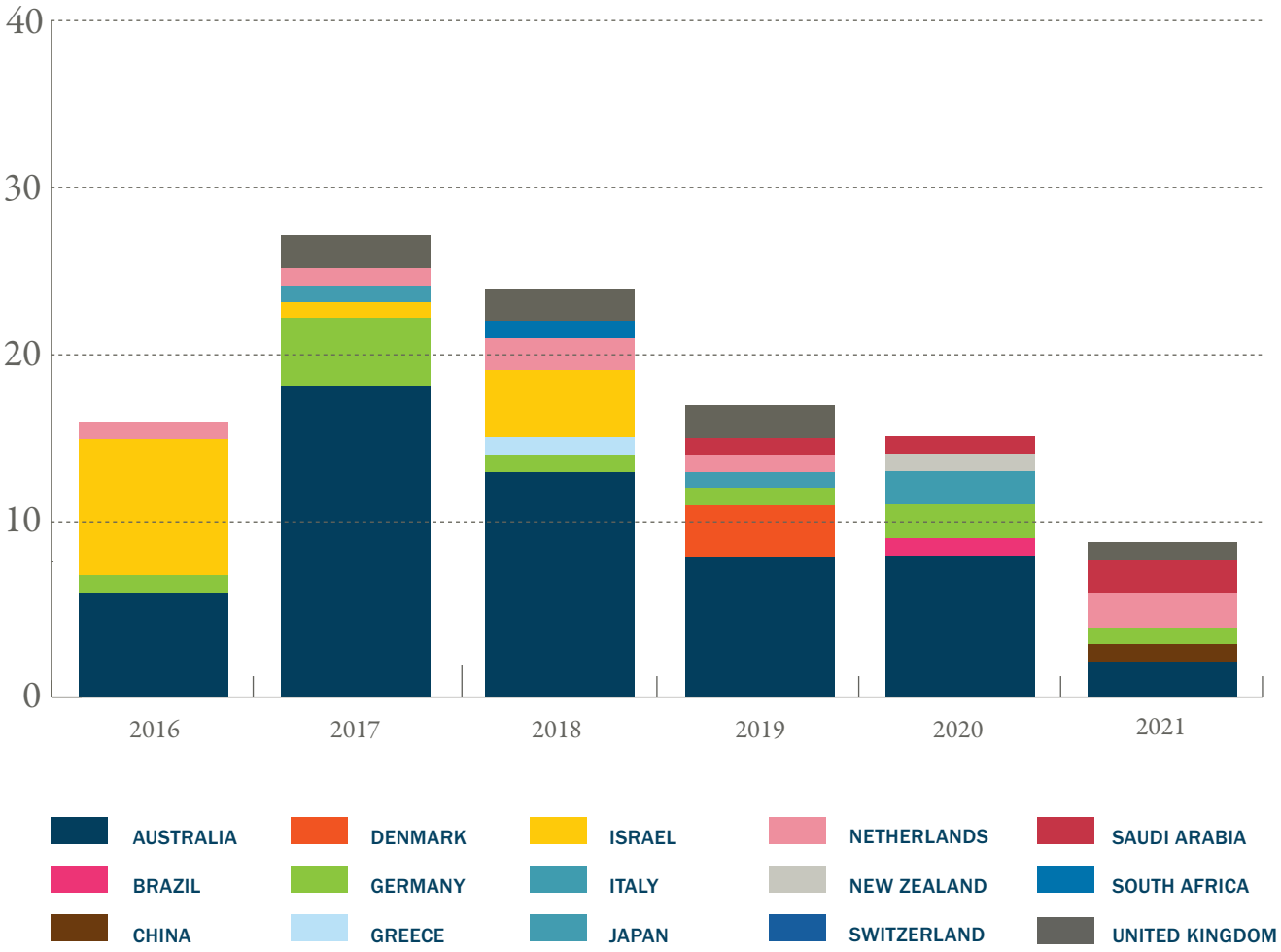
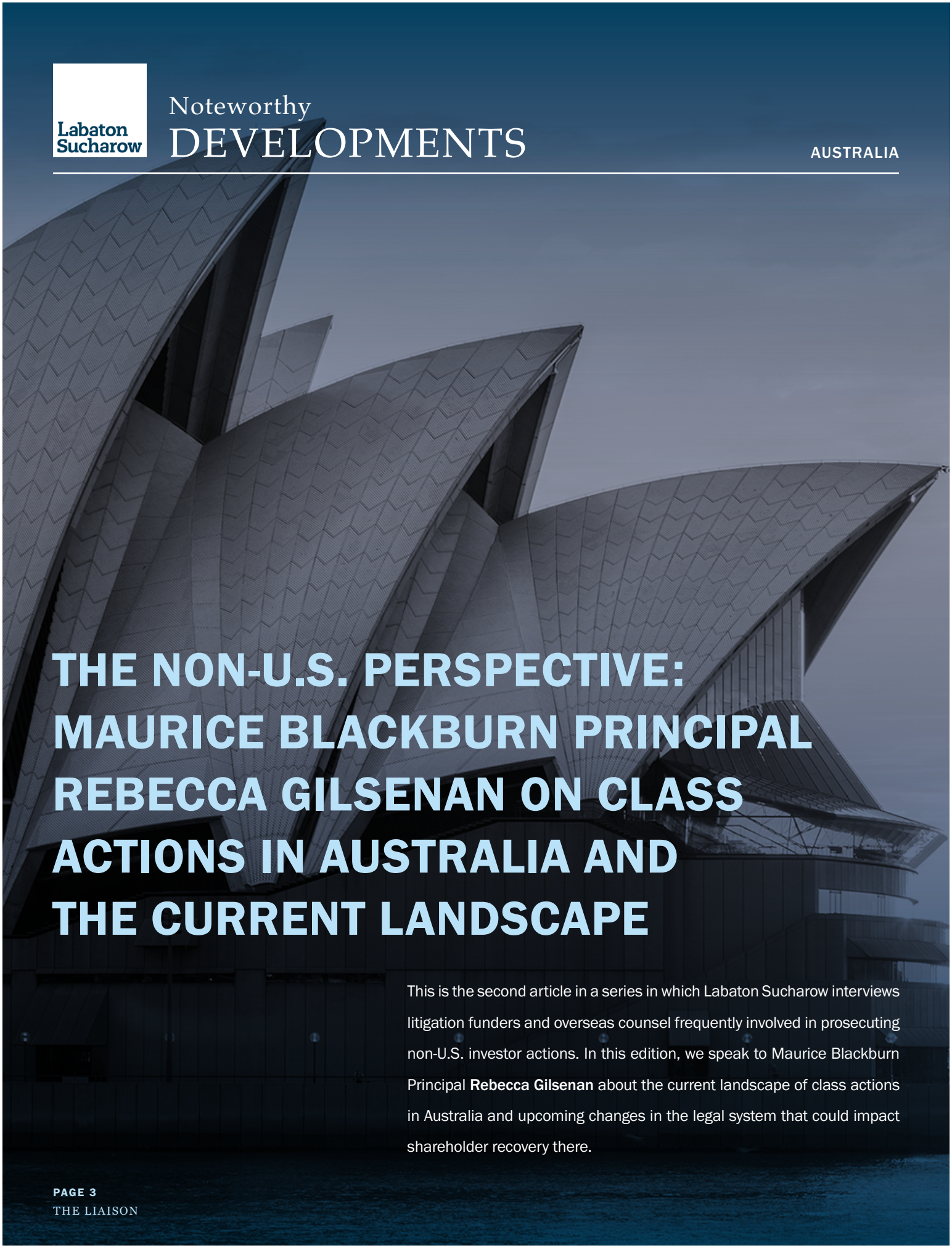


*Based on data compiled by Institutional Shareholder Services Inc.'s Securities Class Action Services. Accurate as of December 31, 2021.



THE NON-U.S. PERSPECTIVE: MAURICE BLACKBURN PRINCIPAL REBECCA GILSENAN ON CLASS ACTIONS IN AUSTRALIA AND THE CURRENT LANDSCAPE

This is the second article in a series in which Labaton Sucharow interviews litigation funders and overseas counsel frequently involved in prosecuting non-U.S. investor actions. In this edition, we speak to Maurice Blackburn Principal **Rebecca Gilsenan** about the current landscape of class actions in Australia and upcoming changes in the legal system that could impact shareholder recovery there.

Q: WHAT IS MAURICE BLACKBURN'S ROLE IN AUSTRALIAN CLASS ACTIONS?

Maurice Blackburn is Australia's largest and most successful plaintiff class actions law firm. We have acted in more class actions than any other Australian firm, including most of the nation's biggest cases.

Our practice dates back to the early days of the Australian class action regime in 1996, and since then, we have been at the forefront of developing the Australian class action system in ways that help open access to justice and encourage better standards of corporate conduct.

We have recovered more than $3.7 billion in compensation for clients across a range of actions including shareholder and listed securities cases, product liability claims, consumer actions, cartel cases, and mass tort claims. Maurice Blackburn is a standout performer in listed securities class actions, being the only Australian class actions firm to deliver outcomes in excess of $100 million and having done that now on eight occasions.

Q: AMERICAN CLASS ACTIONS DO NOT REQUIRE SHAREHOLDERS TO REGISTER OR TAKE ANY ACTION IN ORDER TO PARTICIPATE IN A SETTLEMENT RECOVERY. HOW DO AUSTRALIAN ACTIONS DIFFER?

Australian class actions operate on an opt-out basis but with the proviso that group (*i.e.*, class) members wishing to participate in a settlement must register their details before a deadline set by the court.

Class members who do not actively opt-out or register their details will be bound by the terms of any settlement of the proceeding but will not be entitled to receive any benefit from that settlement. In other words, unregistered group members are "locked out" of the settlement and cannot receive compensation, and they also have their rights extinguished by the settlement and cannot bring a future claim against the defendants.

For a long time, Australian courts were making orders in advance of mediation providing for binding registration/class closure. Recently, a series of decisions have led to a change in that practice, and currently, group members cannot be required to register until a settlement or a trial outcome is reached. We suspect that we have not heard the last of this issue, and the Full Federal Court of Australia is going to revisit the question of power to make early class closure orders in a hearing on February 25, 2022.

As things presently stand, we still encourage group members to register claims as early as possible so that the size of the claim can be reliably assessed prior to mediation taking place. Otherwise, there can be a dilution effect when the settlement is reached, particularly if several large claims are only revealed at this point.

Q: IS AUSTRALIA'S CLASS ACTION SYSTEM FEDERAL OR GOVERNED BY STATE LAW?

Both Federal and State jurisdictions have procedural regimes facilitating class actions. There are five jurisdictions in Australia with modern class actions regimes: Commonwealth (Federal), Victoria, New South Wales (NSW), Queensland, and Tasmania.

The majority of class actions can be filed in either Federal or State jurisdiction with some limited exceptions. In the past 29 years, which is the period during which the Federal regime has been operational (with State regimes following in subsequent years), around 75% of class actions have been filed in the Federal Court. Geographically speaking, most cases are filed in Victoria and New South Wales—either in those Registries of the Federal Court of Australia or in the Supreme Courts of Victoria and New South Wales. Few cases are filed in Queensland or Tasmania. The Federal Court (particularly in its Victorian registry) and the Victorian Supreme Court are regarded as slightly more predictably hospitable to plaintiffs than other jurisdictions.

Since July 1, 2020, there has been a sharp uptick in cases being filed in the Victorian Supreme Court, which is attributable to the fact that U.S.-style contingency fees have been made available in that jurisdiction only. Contingency fees (referred to as a "Group Costs Order" in Victoria) allow lawyers to receive a percentage of the proceeds of the litigation.

The law governing the practice and procedural aspects of class actions (as distinct from the underlying causes of action, such as misleading and deceptive conduct) continues to evolve quickly in Australia. Historically, most of the law has been made in the Federal jurisdiction, but increasingly, the Victorian and NSW Supreme Courts are also making the law. This has the capacity to create some complexity because, for the purpose of applying the doctrine of precedent, each of the State Supreme Courts and the Federal Court are in a separate hierarchy. In practice, the decision of a superior court strictly binds only courts in the same hierarchy. The decisions of superior courts in a separate hierarchy are strongly persuasive in the sense that they should be followed unless it is thought that the authority is plainly wrong. So, for example, a decision of the NSW Court of Appeal should not be departed from by a single judge in the Federal Court, unless the judge is convinced that it is plainly wrong. The High Court of Australia is at the apex of all hierarchies and its decisions bind both State and Federal courts.

Q: HOW DO AUSTRALIAN LAW FIRMS FUND THE CASES THEY WORK ON?

Australian law firms are prohibited from acting as litigation funders on their own cases, however there are ways in which plaintiff firms can run cases without involving a third-party litigation funder.

The majority of class actions that Maurice Blackburn has commenced in recent years are being conducted without a third-party litigation funder. Our cases are run on a no win, no fee basis. This means that payment of all legal costs is deferred unless and until there is a successful outcome, at which point

the lawyers are paid their fees plus, in some cases, an uplift fee of up to 25%. Under this method, costs are calculated on a traditional time-based billing method and any uplift fee is a percentage of those costs.

In 2020, Victoria introduced legislation that allows lawyers conducting cases there to do so on a contingency fee basis, known as a group costs order. If a group costs order is approved by the court, the lawyers can charge fees that are calculated as a percentage of proceeds of the litigation. The method of charging and the percentage that can be charged must be approved by the court.

The majority of law firms running class actions in Australia continue to use third party litigation funders to finance most cases. Maurice Blackburn seeks to run its cases without third party litigation funders to the extent possible because this tends to improve returns to group members and because we have the strength in our own balance sheet to do so.

Q: WHAT LEGISLATIVE DEVELOPMENTS COULD FUNDAMENTALLY CHANGE HOW AUSTRALIAN CLASS ACTIONS OPERATE?

For the last 18 months, the Federal Government (which is currently being led by the center-right Liberal Party) has waged a sustained campaign against class actions and litigation funding in Australia. The changes the conservative Liberal Party has made have created regulatory chaos, weakened Australia's world-class continuous disclosure regime, and restricted access to justice.

There is draft legislation currently before the Parliament that seeks to limit access to litigation funding in Australian class actions. A key part of the legislation is a requirement of a 70% minimum return to class members, with a maximum of 30% able to be claimed by the law firm and litigation funder supporting the case to cover legal and funding costs. The reason this legislation is unhelpful is that its presumptive 30% cap will deter the funding of meritorious but smaller claims. Litigation funders will be motivated only to fund very large, very certain cases—for the most part, these will be shareholder claims. Smaller cases (in this context, anything worth less than about A$100 million) and those that are riskier simply will not attract funding. In the cases that do get funding, defendants will be incentivized to run up costs, knowing that their opponents cannot, and cases will be determined by financial resources rather than merits.

In addition to this, the draft legislation creates ambiguity around the availability of common fund orders. The effect of this will be to restrict litigation funding to closed classes of group members who sign a costs agreement at the outset; group members who do not sign up will be excluded from the case. This is largely how investor actions are organized in Europe. In Maurice Blackburn's experience, closed actions often disadvantage those most in need of redress. They also increase transaction costs because proactively working to sign up group members (known as "book building") is expensive, and these increased costs will be spread across a smaller group of claimants. Finally, closed actions will encourage multiple proceedings over the same subject matter involving multiple closed classes and "mop up" open classes.

This legislation is due to be debated in the Senate in February 2022 but may be impacted by the timing of the 2022 Federal election in Australia. If passed, it will fundamentally impact how class actions operate in Australia by restricting access to litigation funding, restricting the types of cases that are brought and encouraging closed class actions. It is really a benefit to big business and wrongdoers dressed up as concern for class action participants.

Q: WHAT CASES OR ISSUES ARE CURRENTLY PENDING THAT COULD MATERIALLY AFFECT HOW CLASS ACTIONS ARE BROUGHT?

PRE-SETTLEMENT CLASS CLOSURE ORDERS

Since 2017, Australian courts have frequently made class closure orders before mediation to facilitate settlement before a trial. These orders have been known as "soft closure" orders, and they require group members to register in advance to participate in any settlement. Those group members who do not register or opt out, remain group members and are bound by any settlement though not permitted to benefit from it. This process allows plaintiffs and defendants to better understand the number of class members and quantum of claims (*i.e.*, class-wide damages). It also assists defendants to achieve finality from a settlement because it precludes class members from bringing subsequent cases if they have not opted out.

However, two recent decisions of the NSW Court of Appeal (*Haselhurst* and *Wigmans*) have found that courts do not have power to make these types of binding class closure orders.

Although these decisions are not strictly binding on the Federal Court and other state supreme courts for the reasons discussed above, the principle they espouse regarding class closure orders can only be departed from by other courts if it is thought to be plainly wrong. The correctness of the decisions has been doubted in a recent decision of the Federal Court and the Federal Court appears to have been looking for an opportunity to refer the issue to the Full Federal Court for consideration.

Late in 2021, the Full Court of the Federal Court of Australia took a referral in the *Boral* shareholder class action to consider the issue of the Court's power to make pre-settlement class closure orders. This will be heard in late February 2022, and we predict that the Court will quickly deliver a decision finding that there is power to make these orders.

COMPETING CLASS ACTIONS

In early 2021, the High Court of Australia dealt with the question of competing class actions and how to decide which competing actions would proceed. In the context of the *AMP* shareholder action, which is being brought by Maurice Blackburn, the High Court found that the best interests of class members should be the primary consideration of the Court, not the order in which actions are filed. The court of first instance had appointed Maurice Blackburn as the lead counsel and in doing so placed particular weight on the no win no fee model it was using, finding that this was likely to provide the best return for class members.

In making the decision as to which competing class action will proceed, the High Court endorsed the multifactorial approach, which focuses on eight factors:

1. Funding proposals, costs estimates and likely return to group members;
2. Proposals for security for costs;
3. Nature and scope of the causes of action advanced (and relevant case theories);
4. Size of the respective classes signed-up with the competing lawyers and/or funders;
5. The extent of any book build undertaken by the competing lawyers and/or funders;
6. Experience of the legal practitioners and availability of resources;
7. State of progress of the proceeding; and
8. The conduct of the representative plaintiffs.

Following the *AMP* case, we expect courts to continue to exercise discretion in applying the various factors in the context of choosing one action over another, and to continue to give significant weight to the first of the 8 factors. Importantly, and unlike U.S. procedure, the amount of a class representative's own losses is not one of the factors the *AMP* court used.

In a recent similar decision in the *Boral* case, the Federal Court of Australia found that the likely return to group members is important in allowing a case to proceed. However, in that case, a second proceeding by a competing law firm was allowed to proceed as a closed class due to the significant number of institutional investors that had signed up with that firm.

WHO HAS STANDING TO BRING A SHAREHOLDER CLAIM IN UK LITIGATION?

Institutional investors joining shareholder actions in the UK are increasingly finding their standing to act as claimants challenged by defendants. Courts in the UK and Europe have often taken a more prescriptive approach to standing than their U.S. counterparts. This has sometimes meant that an investor may satisfy the standing requirements in the U.S. but must sue in a different capacity overseas. For example, a U.S.-based trust or pension fund can often litigate as such in U.S. courts only to find that when suing in the UK and Europe the individual trustees must act as the claimants instead in order to meet local standing requirements. This can initially alarm trustees who may fear they are opening themselves up for potential personal liability. Fortunately, the reality is that when individual trustees are added as claimants, it is on behalf of the trust or fund rather than in an individual capacity.

G4S PLC

A 2021 case in the UK has provided some meaningful guidance and insight on the standing issue in securities litigations there. In civil actions under English law, a claim form is filed with the relevant court, and then the claimants have up to four months to serve the claim on the defendant, unless that period is extended by mutual agreement. It is the service of the claim on the defendant that commences the litigation, rather than its filing.

In the *G4S plc* action, claims were initially brought in July 2019, just before the statute of limitations ran. New claimants were added after the statute ran but before service of the claim. A group of claimants from both camps—*i.e.*, those whose claims were filed in July 2019 and those whose claims were filed after—were challenged by the defendant on standing grounds. *G4S plc* argued that these particular claimants had not been properly named. Claimants' counsel sought to remedy this. Yet, High Court Justice Mann rejected this attempt, in part because the limitations period had since run. The G4S plc decision underscores the potential risk of naming the wrong entity, particularly when the claim is filed very close to the limitations period.

In this case and other recent UK-based actions, institutions found that the way they were named subjected them to challenges. For example, a trust deed may stipulate that title to the securities in question vest in the trustees, rather than the trust, and thus it is the trustees who have the capacity to bring legal proceedings on behalf of the trust. For some U.S. state retirement systems, the relevant statute stipulates that it is the board, rather than the system itself, that has the power to sue—thus requiring the board to be named along with the system. Issues have arisen for asset managers as well, with defendants challenging whether it is the manager or the entity they manage that is the proper party, with the determination increasingly being made to name the managed entity rather than the manager.

Chris Warren-Smith, a partner in the UK office of Morgan Lewis & Bockius LLP, oversees the ongoing *G4S plc* matter. He discusses below the repercussions of the High Court's March 2021 decision.

Q: WHO IS THE CORRECT CLAIMANT WITH STANDING TO BRING A LAWSUIT IN THE UK?

Securities litigation remains very much a developing area of litigation in England and Wales and is significantly less established than its counterpart regime in the United States. One consequence is that there is little precedent on how these cases should function and how issues should be determined. As a result, conventional wisdom and understanding of how these cases unfold is constantly evolving.

A preliminary issue that has become central in securities litigation is determining whether each claimant has "standing" to bring its claim. To put this issue into context, when a claim is commenced, a form (called a claim form) is filed with court that states the legal name of each claimant seeking compensation. One tactic used by defendants has been to argue that the entity named on this form does not have standing to bring the claim.

[1] See *Various Claimants v G4S plc., [2021] EWHC 524 (Ch).*

There are in essence two limbs in determining whether a claimant has standing. First, the claimant must have had legal or beneficial ownership in the security(ies) of the defendant. Secondly, the claimant must have capacity to enter into legal proceedings; in other words, it must be a legal person capable of entering into legal proceedings.

Defendants are now requiring, as a preliminary step, that each claimant demonstrate that it has standing to bring a claim. Issues of standing have primarily been dealt with through agreement between the parties and during discussions with the court during the "Case Management Conference" (*i.e.*, an early hearing for the court to identify and understand what the real issues in dispute are and to consider whether they can be narrowed before trial, and to set a timetable for the litigation).

Because many institutional investors usually have complex and even opaque structures, meeting both elements of standing can sometimes be difficult. The exercise usually requires a thorough analysis of the claimant's corporate structure as well as their constitutional documents.

The answer to the first limb of the standing question (identifying which entity held legal title to the security) is usually found within a claimant's constitutional documents or pursuant to the local statute under which the claimant is incorporated. In the case of trust funds (*e.g.*, institutional investors structured as business trusts) the underlying trust deed usually contains specific provisions that stipulate where title to the assets purchased by the trust vests. In many cases, this has been with the trustee(s) of the trust, and so, the trustee(s) acting in their capacity as trustee(s) of the trust would be the correct claimant.

Other possible claimants may include Luxembourg SICAVs (acting on behalf of their sub-funds) and the board of trustees of U.S. retirement systems (depending on the laws governing that system). In both examples, it has usually been the case that local statute stipulates that the assets purchased by the sub-funds or retirement system are owned by the SICAV or board of trustees (as relevant).

Some of the confusion over where legal title vests arises out of the fact that the actual entity that holds title in the security was not the entity responsible for making the investment decisions in the first place. In the majority of cases, the claimant outsourced the day-to-day investment decision making to an independent investment manager or advisor. It is rare that these investment managers were also the entities that the held titles to the securities, and instead, they only acted as the decision makers on behalf of the investor. As a result, it is rare that the investment manager or advisor is the correct claimant.

There are, of course, exceptions to this generalization. For example, in the case of investment funds governed by French law ("fonds commun de placement"), the structure and laws governing these vehicles stipulate that the asset manager of the fund *does* hold title to the fund's assets.

Once the question of title has been settled, the second limb to the issue of standing is determining whether that same entity is also able to enter into legal proceedings (*i.e.*, is the entity a legal person/body corporate). In some cases, this is same entity or person, so there is no issue. For example, in the case of trust funds, the legal person(s) capable of entering proceedings is usually set out in the underlying trust deed and, more often than not, the provision states that it is the trustee(s) of the fund that have the power to enter into litigation on behalf of the fund. Similarly, in the case of U.S. retirement systems, a local statute usually specifies that it is the board of trustees (acting on behalf of the system) that is capable of entering into litigation on the system's behalf.

Difficulties can arise where the entity that holds title to the securities is not a legal person/body corporate. In these cases, one usually has to look "up the corporate ladder" to identify the next entity in the corporate chain that is a legal person/body corporate capable of entering into legal proceedings. As the same time, it is important to also assess that there is some degree of legal connection or relationship between the entity that held title to the security and the entity capable of bringing proceedings. As with the first limb, the correct answer to the second limb is rarely the relevant investment manager.

Q: WHAT ARE THE KEY TAKEAWAYS OF THE G4S DECISION AND WHAT IS ITS LIKELY IMPACT ON PENDING AND FUTURE CASES IN THE UK?

The actual decision addressed a fairly niche aspect of procedural law in English and Welsh litigation, but the implications of the decision are wide ranging and the judge made a number of comments and observations that will inform how the courts will handle aspects of securities litigation going forward.

Primarily, this decision emphasizes the importance of correctly naming claimants (in accordance with the two limbs described above) in the first instance, especially in cases where the limitation period for bringing a claim is close to expiring. This is because, if an amendment to the claimant's name after the limitation period has (arguably) expired would impact either of the two limbs of standing, the court will essentially treat this amendment not as an amendment to an existing claimant but rather as an addition of a new claimant. New claimants cannot be added once the limitation period has expired.

This decision was the first of its kind on this point and was met with some surprise in the UK legal market. The claimants were granted permission to appeal, but the scope for what could be appealed was too narrow as to offer the claimants any meaningful recourse.

This case highlights the importance of resolving issues of standing *prior* to the commencement of litigation. Resolving this issue early will avoid time-consuming and costly applications and debates between the parties and help ensure that the proceeding can easily advance to the substance of the claim.

Q: WHAT STEPS CAN CLAIMANTS TAKE TO ENSURE THEIR CLAIMS ARE PRESERVED AND NOT STRUCK OUT BY THE COURT?

As noted, securities litigation in England and Wales remains a relatively novel area of litigation, and as a consequence, the requirements and expectations for claimants participating in actions is dynamic. However, the decision highlights a number of steps claimants should, and are expected to, take in order to preserve their claim while minimizing the burden of participating in the litigation.

As a first step, claimants should work with the law firm to identify which entity within its corporate structure is the entity that has standing by considering both limbs of the "standing" issue. Understandably, many organizations automatically default to providing the investment or asset manager as the claimant, as they would be the entity responsible for deciding whether or not to purchase the defendant's shares. However, for litigation in England and Wales, potential claimants should, in the first instance, identify the entity where title to purchases assets (including securities) vests.

The second step will be to determine whether or not that same entity is a legal person or body corporate capable of entering into legal proceedings. If not, the claimant will have to identify which entity up the corporate chain is the next **legal** entity, ensuring that a legal connection or relationship (either via operation of law or pursuant to a separate legal document) exists between that legal entity capable of litigating and the non-legal entity that held title to the securities. Depending on the structure of the claimant, answers to the title and capacity questions are usually found in the trust deeds (in the case of trust funds), local statutory provisions (in the case of state pension systems), or annual reports or prospectuses (in the case of most other varieties of investment funds).

WHAT'S BREWING IN ASIA FOR INVESTORS?

Investors are now fairly familiar with actions outside the U.S. In the past decade, countless shareholder group and class proceedings have been brought in Australia, Canada, Denmark, Germany, Israel, Italy, the Netherlands, the UK, and various other jurisdictions. But in Asia, investor lawsuits have largely been limited to Japan, with a few stragglers brought in South Korea, some in Taiwan (which excludes overseas investors), and very recently one in China. Why haven't investor rights been more frequently exercised in the world's most populous continent? Several reasons explain the dearth.

LITIGATION FUNDERS GRAVITATE TO STABILITY

In most jurisdictions outside the U.S., attorneys are largely precluded from funding an investor action. Thus, most non-U.S. actions are initiated by litigation funders—third parties who organize an action, register investors who wish to join it, hire litigation counsel, and advance all case costs, including paying counsels' hourly rates. In exchange, the funders receive a percentage of any recovery investors get back. Without litigation funding, non-U.S. counsel either have to bill their clients directly (which many clients would reject) or simply forgo representing them (leaving many investors without a remedy). Litigation funders are financiers and thus are understandably driven to maximize profits and minimize risk. They have a strong commercial incentive not to put up capital unless they feel the action will result in a successful recovery.

Several issues exist in Asia that have limited funders' interest there, with the biggest barrier perhaps that the laws and civil procedures in most Asian jurisdictions still do not provide a clear and tested remedy for investor actions, and in some there is no mechanism at all for bringing them. For example, a funder may see otherwise viable claims for securities fraud against companies based in Singapore, Malaysia, Thailand, or Indonesia, but the laws in these countries still do not provide an obvious remedy for organizing a group proceeding where the funder can combine the losses of many investors in order to make the action economically interesting. This is true in Hong Kong as well, although an active appraisal rights litigation market has developed there because of the large number of locally-listed companies that have their corporate seats in the Cayman Islands. Some funders have jumped in to finance these proceedings. However, while it is the Hong Kong-listed company being sued, the actual litigation is in the Cayman Islands.

While not prime candidates for shareholder group actions, jurisdictions like Singapore and Hong Kong remain attractive to funders on the arbitration front. In this setting, a Vietnamese company may wish to enforce a breach of contract claim against an Indonesian company through arbitration in Hong Kong. A litigation funder might step in to finance the cost and risk of the arbitration on behalf of the Vietnamese company in exchange for a percentage of any monies it recovers. These types of arbitration claims constitute perhaps the most common vehicle used by funders in Asia. Yet, even on the arbitration front, funders still eschew many jurisdictions because they fear any decision by an arbitrator in their favor, or any relevant court judgment, cannot be enforced in the home country of the defendant. This is a particular worry if the defendant is state owned. For this reason, some funders have steered clear of China, India, Vietnam, and other countries. There are exceptions, of course. Some funders are comfortable funding arbitrations in China, so long as they are brought in Shanghai and do not involve a domestic company. On the other hand, India's slow legal process has dissuaded funders from pursuing interests there.

Although there have been several shareholder group actions in South Korea in the past ten years, these seem more faddish than

portentous. The Korean legal structure is favorable to investors, but the country remains dominated by a small number of very large companies with significant cross-shareholdings, making it difficult for large Korean institutional investors to participate. Without their participation, funders are less likely to step in. In Taiwan, shareholder actions have frequently been brought by the local regulatory entity, but these are largely limited to domestic investors.

In sum, the law and procedures in most Asian jurisdictions remain unfavorable to shareholder group actions, thus disincentivizing funders from backing proceedings there. Japan is a notable exception. In the future, China may be as well.

THE BIG KAHUNA: CHINA

Investors have wondered for years whether China, with its growing number of publicly-traded companies being listed there and abroad, would be ripe for shareholder actions. New rules came into force in early 2020, which tightened disclosure requirements and the sanctions for violating them. The China Securities Regulatory Commission (the "CSRC"), China's primary securities regulator, then launched new rules for securities litigation in the summer of 2020, making it easier for investors to hold companies liable in China.

The result of these changes was illustrated in November 2021, when Chinese herbal medicine producer Kangmei Pharmaceuticals was found guilty of engaging in financial fraud and was ordered to pay investors $385 million in compensation. This result originated from a CSRC investigation in 2020 in which administrative penalties were imposed on various Kangmei officers and directors. Thereafter, the China Securities Investor Services Center ("CSISC"), an arm of the CSRC, was appointed to represent investors in a class action against Kangmei. The Guangzhou Intermediate People's Court found Kangmei guilty and also issued fines against its auditor.

Prior to the Kangmei case, litigation funders seemed to show little interest in China. Its presumed protection of home-grown companies, suspicions of a corrupt judiciary, and questions about judgement enforcement kept funding money away. It remains to be seen whether the Kangmei case will influence a change in the Chinese legal landscape to allow private investor actions, as opposed to government-led vehicles like Kangmei, to proceed.

JAPAN...JAPAN...JAPAN

To date, the one reliable jurisdiction in Asia for shareholder actions remains Japan. Multiple lawsuits have been launched in the past ten years, often against global brands like Olympus, Toshiba, Nissan, and Mitsubishi. But even lesser known companies, such as Livedoor, Kobe Steel, and Kansai Electric have been targets. Importantly, not only have cases been brought, but some of these actions have now settled, showing both funders and investors that Japan can be a results-oriented jurisdiction.

One of the things that sets Japan apart from other Asian countries is that it has instituted both laws and procedures that allow private enforcement of corporate fraud. In Japan, liability and claims for damages resulting from corporate

wrongdoing are governed by the Japanese Financial Instruments & Exchange Act of 2006 (the "FIEA"), the Japanese Civil Code (the "JCC"), and the Japan Companies Act (the "Companies Act"). The FIEA, which was adopted in 2006 to protect investors after several corporate scandals surfaced, is often referred to as "J-SOX" for its resemblance to the U.S. Sarbanes-Oxley Act. It specifically governs official statements made by public companies, such as those in annual reports and securities registration statements. The FIEA imposes strict liability for making misrepresentations in prospectuses and annual financial reports, and employs a straightforward method of calculating losses, with built-in presumptions for claimants. The JCC generally relates to other misstatements or omissions of fact, such as those made in conferences, press releases, and statements to the media. A company's specific liability for disseminating false and misleading information is governed by the FIEA, while the JCC governs general tort liability. The Companies Act governs directors' liability and derivative actions.

Unlike in the United States, there is no established class-action structure for investor actions in Japan, but there is a provision for consolidating common individual claims into a "joint proceeding." Under this "joint proceeding" framework, every plaintiff is required to "opt in" and be named in the suit to be entitled to claim damages. This enables a funder to pool investor claims effectively so that this type of joint proceeding operates in many ways like a class action. Japan is also a very low adverse costs jurisdiction; a Japanese court can award them, yet generally these costs do not include attorneys' fees, which tend to form the lion's share of costs for any litigation.

For litigation funders, Japan's favorable investor laws, its sophisticated legal bench, the existence of local financial experts to advise, a costs regime similar to Europe's, and limited adverse costs risk, continue to make it far and away the most attractive jurisdiction in Asia.

With very limited exceptions, shareholder actions are not brought in Asia, something unlikely to change in the foreseeable future. While funders will continue to pursue opportunities in arbitration in Singapore and Hong Kong, they seem likely to continue to steer clear of most other Asian jurisdictions. For shareholders, Japan remains an extremely relevant and useful jurisdiction, with South Korea and potentially China providing some value. But for investors looking to recover monies through private actions, Asia as a whole does not appear to be headed in the direction of Europe any time soon.

A2 MILK COMPANY

TICKER: A2M.AX and ATM.NZ **ISIN:** NZATME0002S8

CUSIP : Q2774Q104 **SEDOL:** 6287250; BWSRTS7

TRADING PERIOD: August 19, 2020 to May 7, 2021 (inclusive)

CASE NAME: S ECI 2021 04403 Yue Xiao V The A2 Milk Co. Ltd.

ACTION TYPE: Class Action **STATUS:** July 16, 2021

On November 23, 2021, a shareholder class action was filed in the Supreme Court of Victoria against dairy nutritional company The a2 Milk Company Limited ("a2 Milk") on behalf of shareholders who suffered losses following a 62% drop in market value in FY21. The class action alleges that during the trading period, a2 Milk engaged in misleading and deceptive conduct, breached its continuous disclosure obligations, and failed to adequately disclose future trade plans. Specifically, the complaint alleges that by August 19, 2020, the company was, or should have been aware that their Fiscal Year 2021 guidance and following representations did not account for several factors that were known to a2 Milk, including (i) the decline in reseller sales and (ii) the decline in its Cross Border e-Commerce Channel ("CBEC") business due to a drop in reseller sales. These factors ultimately impacted a2 Milk's financial performance, resulting in a 62% drop in market value in FY21 and thereby injuring investors.

Labaton Sucharow would be happy to discuss with you the specifics of the proposed action against A2 Milk and investors' options for recovery abroad.

NUIX LIMITED

TICKER: NXL.AX **ISIN:** AU0000119307

CUSIP : Q7012J101 **SEDOL:** BMW7P63

TRADING PERIOD: November 26, 2020 to June 29, 2021 (longest)

ACTION TYPE: Class Action **STATUS:** Filed

In November 2021, two class actions were filed against investigative analytics and intelligence software company Nuix Limited ("Nuix") in the Victoria Supreme Court on behalf of investors who purchased Nuix shares on the Initial Public Offering ("IPO") and those who acquired prior to June 29, 2021.

The class actions allege that Nuix's offering materials contained material misstatements and omissions in breach of section 728 of the Corporations Act 2001 (Cth) (Corporations Act) when it provided materially misleading FY21 guidance as it lacked a reasonable basis to be met and failed to disclose that the company was experiencing significant technical, financial forecasting and corporate governance problems that compromised its capacity to meet its financial forecasts. When Nuix announced it had revised its forecast for FY 21 and would not meet its previously published prospectus guidance, the company's share price fell by approximately 15%. On June 20, 2021, multiple media outlets published articles revealing that a former Nuix officer was being investigated for insider trading. The next day, Nuix publicly revealed to the ASX the insider trading investigation and announced a further ASIC investigation into the affairs of the company. Following these revelations, the company's share price fell approximately 13% by the end of trading day on June 30, 2021.

Labaton Sucharow would be happy to discuss with you the specifics of the proposed action against Nuix and investors' options for recovery abroad.

Labaton Sucharow

Non-U.S. Securities Actions
LAUNCHED IN 2021

NEW NON-U.S. ACTIONS 2021

CASE NAME	COUNTRY
ALITA RESOURCES LTD.	AUSTRALIA
BEACH ENERGY LIMITED (SHINE LAWYERS)	AUSTRALIA
BEACH ENERGY LIMITED (SLATER & GORDON)	AUSTRALIA
BLUE SKY ALTERNATIVE INVESTMENTS LTD. (SHINE LAWYERS)	AUSTRALIA
EML PAYMENTS LTD. (PHI FINNEY MCDONALD)	AUSTRALIA
INSURANCE AUSTRALIA GROUP LIMITED	AUSTRALIA
MESOBLAST LIMITED (PHI FINNEY MCDONALD)	AUSTRALIA
MESOBLAST LIMITED (WILLIAM ROBERTS LAWYERS)	AUSTRALIA
NUIX LTD. (BANTON GROUP)	AUSTRALIA
NUIX LTD. (PHI FINNEY MCDONALD)	AUSTRALIA
NUIX LTD. (SHINE LAWYERS)	AUSTRALIA
PHOSLOCK ENVIRONMENTAL TECHNOLOGIES LIMITED	AUSTRALIA
STAR ENTERTAINMENT GROUP, INC. (MAURICE BLACKBURN)	AUSTRALIA
STAR ENTERTAINMENT GROUP, INC. (PHI FINNEY MCDONALD)	AUSTRALIA
STAR ENTERTAINMENT GROUP, INC. (SLATER & GORDON)	AUSTRALIA
THE A2 MILK COMPANY LIMITED (BANTON GROUP)	AUSTRALIA
THE A2 MILK COMPANY LIMITED (SHINE LAWYERS)	AUSTRALIA
THE A2 MILK COMPANY LIMITED (SLATER & GORDON)	AUSTRALIA
KANGMEI PHARMACEUTICAL CO., LTD.	CHINA
DAIMLER AG (BREITENEDER)	GERMANY
VOLKSWAGEN AG BONDS (2021)	GERMANY
AIRBUS SE (DRRT)	NETHERLANDS
AIRBUS SE (WOODSFORD)	NETHERLANDS

*Based on data compiled by Institutional Shareholder Services Inc.'s Securities Class Action Services. Accurate as of December 31, 2021.

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Non-U.S. Securities Actions
LAUNCHED IN 2021

NEW NON-U.S. ACTIONS 2021

CASE NAME	COUNTRY
ETIHAD ETISALAT CO.	SAUDI ARABIA
WEQAYA TAKAFUL INSURANCE & REINSURANCE CO.	SAUDI ARABIA
AC&C INTERNATIONAL CO., LTD./SHENGHUA ENTERTAINMENT COMMUNICATION CO., LTD.	TAIWAN
FAR EASTERN DEPARTMENT STORES LTD.	TAIWAN
INTERACTIVE DIGITAL TECHNOLOGIES/SOFIVA GENOMICS	TAIWAN
NATIONAL AEROSPACE FASTENERS CORP. (2021)	TAIWAN
ROO HSING CO. LTD.	TAIWAN
TAH HONG TEXTILE CO., LTD.	TAIWAN

NEW NON-U.S. ACTIONS BY JURISDICTION

AUSTRALIA **18** | CHINA **1** | GERMANY **2** | NETHERLANDS **2** | SAUDI ARABIA **2** | TAIWAN **6** | TOTAL **31**

*Based on data compiled by Institutional Shareholder Services Inc.'s Securities Class Action Services. Accurate as of December 31, 2021.

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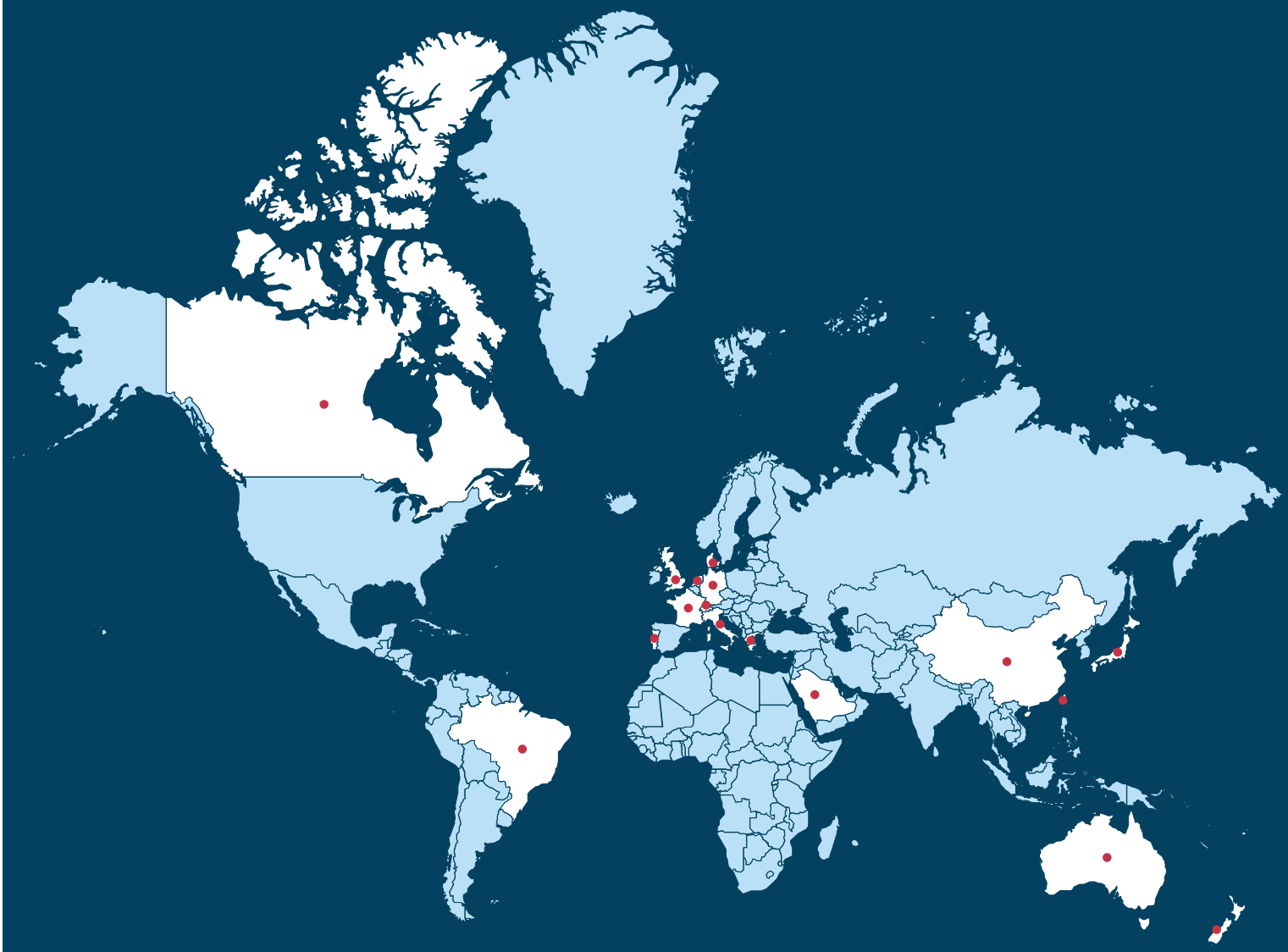
Global LITIGATION SNAPSHOT



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
- SWITZERLAND
- TAIWAN
- UNITED KINGDOM

CONTACT US

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.

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THANK YOU