

## THE REFORM OF THE ITALIAN CLASS ACTION

On 20 April 2020, the Italian class action reform, introduced by law No. 31 of 2019, will come into force.

### **I. THE MAIN AMENDMENTS**

- Subjective and objective extension: The action will always be available to all those who allege the lesion of “homogeneous individual rights”, therefore no longer only to consumers or users.
- The action may be commenced by each member of the “class”, as well as the non-profit organizations or associations, that have as their institutional purpose the protection of the aforementioned rights, which are registered in a list held by the Ministry of Justice.
- The class action can only be brought against companies and bodies that manage public services.
- The competent judge will be the Commercial Courts and the action will be started through a request to such Courts (the rules of the summary proceedings will apply, Articles 702-*bis* and following of the Italian Civil Procedure Code).
- The request to be a participant in the class action (so called “opt in”) may take place within certain deadlines, not only in the phase following the admission order in the preliminary stage but also in the phase following the Court ruling. The reform subverts in a certain sense the procedural principles, with the possibility of having the single question examined after the assessment of the unlawful conduct was generally carried out by the judge.

### **II. FIRST ISSUES**

- a. Potential extension of the protection to any hypothesis of non-contractual liability.
- b. The right to participate in the class action (“opt in”) at a later stage may lead to even more difficult effects to manage for companies. In fact, the ruling with which the relevant Court may find the class action grounded will not close (as today) the proceeding but will open to a subsequent phase focused on quantifying (i) the damage and (ii) the “opt in” requests. This may entail the high risk of time dilation and tightening of the dispute.
- c. The possibility granted to each participant in the class action (even without the help of a lawyer) to request proof and make claims could render the companies’ right of defense really difficult.
- d. Continued absence of effective and rapid special remedies to restore any image damage caused to the defendant company in the event of media coverage of the action.