

Class Actions: An alert for touristic real estate companies.

Better safe than sorry!

The Class Actions were developed in the frame of current social and economic systems (derive from Industrial Revolution), which have begun to affect not only individuals easily identifiable but groups of people in a collective context. In recent years, large-scale works on sensitive ecosystems, the improper handling of wastes generated by anthropogenic activities and the irrational use of natural resources, have impacted significantly on the environment and the lives of individuals or communities aware that, before the amendments, were limited to enforce its rights to a healthy environment.

The lack of legitimacy for those who were affected, did, on the one hand, impossible access to justice for those who want to sue or demand respect for their fundamental rights and, moreover, allowed companies or corporations to act in breach of environmental legislation with the certainty of not being sued by communities or individuals affected by their actions or activities.

Indeed, were these situations, amongst others, which began to generate “classes” of actors or plaintiffs, which gave rise to what is known in the US as “class actions”.

Since July of 2010, the Mexican government have developed legal reforms involving class actions, which invariably affect all sectors that are closely to the environment, including the tourism sector. These actions recognize individuals or communities’ right to exercise legal actions against companies that are likely to cause damage to the environment or, where appropriate, failed to comply with the environmental legislation at the federal and/or local level. Such legal actions may begin to be used within 6 months after its publication in the Federal Official Gazette i.e. **March 1, 2012**.

Along with the package of reforms of class actions, the term “legitimate interest” has been incorporated in environmental issues. The amended article 180 of the General Law¹ provides an administrative procedure called “Recurso de Revisión” against any person or company that, during the performance of its activities, violate the provisions of environmental laws and regulations, which allows third parties to challenge administrative acts (authorizing such activities) provided they show an impairment of the environment (legitimate interest) without having to provide a legal justification (legal interest). The mechanism itself has already proved its effectiveness. Early this year, the Mexican Supreme Court of Justice (the “**Court**”) ruled in favor of a neighbor from Quintana Roo, who claimed the lack of enforcement of the Ecological Regulation Program for State Territory during the process of issuance of the environmental impact authorization.

¹ General Law of Ecological Balance and Environmental Protection.

In its ruling, the Court emphasized that the development of legislation on collective and diffuse interests tend to expand the legal margins of public participation in environmental policy, through the possibility to claim by legal acts, damage to the environment for failure to comply with applicable regulations.

The individuals or entities authorized or legitimate to promote class actions on environmental issues are: (i) the Federal Prosecutor for the Environment, (ii) the common representative of a community composed of at least 30 members, (iii) environmental civil associations that meet the requirements set forth in the law, and (iv) the Attorney General’s Office.

Any of the aforementioned actors may bring any of the following class actions:

	DIFFUSE ACTION	COLLECTIVE ACTION <i>IN STRICTO SENSU</i>	INDIVIDUAL HOMOGENEOUS ACTION
Plaintiff	Any of the legitimate persons, without demonstrate the existence of relation with the defendant, only the existence of a damage or its imminent risk.	Any of the legitimate persons, when existing express legal bond with the defendant by means of a legal provision.	Any of the legitimate persons, sharing a contractual relation with the defendant. .
Remedies	Restitution of damage redressing the affected objects to their original state before damages, or compensation of damage if its restitution results impossible that shall be destined to a fund ² .	Restitution of damage and indemnification for each member of the affected group.	Specific performance of the contract or judiciary rescission. As well as restitution of damage and indemnification for each member of the affected group.

The statute of limitations for class actions established that plaintiffs may claim for its correspondent remedy during a term no longer than 3 years 6 months, counted from the date on which it was generated the environmental damage ,or if the damage continues over time, the period begin on the last day that any damage to the environment is detected.

The admission of this type of action is mainly subject to: (i) prove the existence of an environmental damage, (ii) that damages claimed has not been resolved or is still to be resolved in other class action

² When remedy of restitution is not possible, the regulation requires the creation of a fund, to be managed by the Federal Judiciary Council, for the deposit of money judgments in certain cases.

different from that exercised, to warrant that the claimed damage has not yet been resolved or its resolution is not still pending through a different action (e.g. individual ordinary action), and **(iii)** the type of action exerted is suitable to environmental damage claim, among others..

At any stage of the proceeding and at the request of the applicant community that proves the urgency, the judge may order the responsible to implement the following precautionary measures: **(i)** cessation of acts or activities that may cause damage to the environment (injunction), **(ii)** performance acts or activities resulting from its failure to generate a damage to the environment, **(iii)** the recall or seizure of goods, instruments, samples and products directly related to the damage to the environment, and **(iv)** in general, any other measure that the Judge considers appropriate. In order to avoid and/or extend the imposition of those measures, the responsible of the damage may provide sufficient security to cover the possible impairment of the environment.

It is important to note that if an individual is considered affected by environmental damage may –by a simple statement- voluntarily adhere to the action brought by the group (community), during any stage of the process and up to 18 months after the final judgment or settlement.

To enforce Court judgments or agreements, judges are empowered to impose fines up to an amount equal to thirty thousand days of the general minimum wage in Mexico City (i.e. around MX\$1,788,600), an amount that may be applied for each day that passes without the determination pending to be fulfilled.

In conclusion, class actions constitute a powerful source for communities, associations and non-governmental organizations, since those actions opening the scope of new claims in a wide variety of circumstances. Such actions should be reviewed and evaluated by the companies and business, whose activities are closely related with the ecological and environmental regulations, including those from the touristic sector.