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PRESS RELEASE

For Immediate Release
1 October 2015

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Consumer Rights Act: Implications for Litigation Funding and beyond

The Consumer Rights Act 2015 comes into force today, 1 October 2015, introducing a UK class action for the first time ever under Schedule 8 of the Act. While class actions will, for the time being, only be available in the competition sphere, Vannin Capital anticipates that this legislation may have a significant impact on the litigation landscape in this country, if such class actions are deemed a success.

There has been much academic debate about the legislative nuances of the Act and how the new class action regime will work in practice. Rosie Ioannou, Senior Counsel at Vannin Capital, highlights the safeguards which the government has established to ensure that the perceived excesses of the US system are avoided,

*"It is clear from the drafting of Schedule 8 that the government was keen to avoid US-style class actions which are perceived by some to be excessive, this is demonstrated by a number of the clauses included in the Act. For example, class actions are only available in the Competition Appeal Tribunal (the "**CAT**") in the context of private actions for breaches of competition law, not in the wider court system. Although, notably, the CAT can now hear stand-alone competition claims: historically, the CAT only had jurisdiction to hear private damages claims in respect of which a regulatory body had already made a finding of infringement (a so-called 'follow on' damages action).*

There are a number of requirements around the way in which claimants can participate in a class action. At a simple level, both opt-in (a claimant choosing to join the class) and opt-out (a claimant automatically being part of the class if they meet the relevant criteria unless they take steps to opt out of it) may be brought in the CAT. However, opt-out class actions can be brought by UK domiciled claimants only. Any foreign domiciled claimants must specifically opt-in to the class. Moreover, as Rosie Ioannou points out,

"Whether they are opt-in or opt-out, before they can be heard in the CAT, all collective actions must first be certified. Among other things, the certification regime requires the CAT to consider that the applicable proceedings "…raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings." All eyes are likely to be on the first class which applies for certification to see how the CAT interprets this requirement in practice."

All collective actions must be brought by a representative: either a directly affected class member or ad hoc representative entity. The CAT will have to authorise the representative to bring the claim and will only do so "…if the Tribunal consider that it is just and reasonable for that person to act as a representative in those proceedings."

"How precisely the 'just and reasonable' requirement will be interpreted by the CAT remains to be seen and, again, is likely to be watched closely be commentators and practitioners alike," notes Rosie. She concludes,

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"What is clear, given experiences in other jurisdictions where class actions now operate, is that funding will be key to their success. It remains to be seen exactly how funding of class actions in the UK will work in practice: different approaches have been taken in other jurisdictions where class actions are currently permitted. We consider that the CAT's approach to certification of claims, including the funding element of such claims will be key.

Litigation funding has already seen exponential growth in recent years and since it is well suited to supporting class actions, I would expect to see this continue at an even faster pace as class actions in the UK gain traction."

For further information or if you would like to speak to one of Vannin's team on this topic, please contact:

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