

Reform of German Model Proceedings Act planned

The German Ministry of Justice has released a draft for a reform of the „Kapitalanleger-Musterverfahrensgesetz (KapMuG)“, the German law on model procedures for mass claims in capital markets cases. The draft needs approval by parliament which is expected for early 2012. The original draft (in German) can be accessed here:

http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/RefE_KapMuG.pdf

The main proposal in the draft is to delete the „sunset clause“ in the KapMuG (currently ending in October 2012) so that the KapMuG would become a permanent part of German procedural law. The area of application of the KapMuG is also enlarged slightly to include not only tort claims, but also contract-based claims that involve false information of the capital markets (e. g. claims against banks or other advisors). However, the Ministry did not follow academic proposals to include the model procedure into the general procedural law and thus open it up to other types of mass claims. According to the Ministry, more experience with the model procedure is still needed before that step could be taken. The Ministry also refused to create an „opt-in“ participation possibility for the model procedure. It therefore still requires an individual suit by every claimant - with the associated large cost risks in a loser-pays-system.

Large parts of the draft cover technical improvements that are designed to speed up the model procedure which has been very slow in many cases; especially in the famous Deutsche Telekom securities case which is now going into its tenth year before the Frankfurt courts.

In addition, it is planned that the model plaintiff's attorney may receive some extra compensation for his work (in addition to ordinary statutory attorney's fees), depending on the value of the claims, but not exceeding about €27,000. Practitioners have already commented that this amount will probably not create much more incentives for the involved plaintiffs' attorneys, but that they will instead - as they do already - resort to third-party litigation funding and other schemes which are designed to circumvent the strict rules on contingency fees that are currently in place in Germany.

The draft finally tries to facilitate settlements by introducing - for the first time in German procedural law - the possibility of a court-approved settlement which would then be binding on all model procedure participants unless they opt-out of the settlement after notification. The Ministry explicitly points to the settlement rules that are in force in the Netherlands in this respect. Contrary to the Dutch rules, however, the KapMuG-settlement would be binding only on those claimants who have already filed an individual suit, and not on all other „silent“ claim-holders.

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