

FIRST EDITION  
2015

# CLASS ACTIONS

A GLOBAL GUIDE FROM PRACTICAL LAW

This first edition of *Class Actions* provides a high level overview of the key issues involved in class and collective actions in 24 jurisdictions around the world, including the definition of class/collective actions; current trends; the regulatory framework; limitation periods; standing and the procedural framework for bringing an action; funding and costs; disclosure; damages and relief; settlement; appeals; alternative dispute resolution and proposals for reform.

Written by leading lawyers in their countries, contributors are ideally placed to provide practical, clear commentary on the inner workings of their respective legal systems.

**General Editor:**  
Omar Shah,  
LATHAM & WATKINS LLP

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Omar Shah,  
LATHAM & WATKINS LLP

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LATHAM & WATKINS LLP

## Argentina

María Morena Del Río,  
ALLENDE & BREA

## Australia

Beverley Newbold, Richard Murphy and Kate Watts,  
MINTER ELLISON

## Belgium

Hakim Boularbah,  
LIEDEKERKE WOLTERS  
WAELBROECK KIRKPATRICK

## Brazil

Tito Amaral de Andrade,  
Gláucia Mara Coelho and Gisela Mation,  
MACHADO MEYER SENDACZ  
E OPICE ADVOGADOS

## Canada

Christopher Naudie and Gillian SG Scott,  
OSLER, HOSKIN & HARCOURT LLP

## China

Yao Feng and Linzhu Wang,  
BROAD & BRIGHT

## France

Frédéric Pradelles, Simon Benoit and Claire-Marie Carrega,  
LATHAM & WATKINS LLP

## Germany

Christoph Baus and Christine Gärtner,  
LATHAM & WATKINS LLP

## India

Jasleen K Oberoi,  
SHARDUL AMARCHAND  
MANGALDAS & CO

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Ahmad Maulan and Agnes Maria Wardhana,  
ASSEGAF HAMZAH & PARTNERS

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LAW OFFICES

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VON WOBESER Y SIERRA, S.C.

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& ASSOCIADOS

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KIM & CHANG

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LATHAM & WATKINS LLP

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Krister Azelius and Maria Maaniidi,  
VINGE

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Jumana Rahman, Anna Hyde and Tanya Macrae,  
LATHAM & WATKINS LLP

## United States

Margaret M Zwisler, Christopher S Yates, William R Sherman, William H Rawson and William J Rinner,  
LATHAM & WATKINS LLP



**General Editor:**  
Omar Shah, LATHAM & WATKINS LLP



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**General Editor**

Omar Shah  
Latham & Watkins LLP

**Commissioning Editor**

Emily Kyriacou  
emily.kyriacou@thomsonreuters.com

**Commercial Director**

Katie Burrington  
katie.burrington@thomsonreuters.com

**Publishing Editor**

Dawn McGovern  
dawn.mcgovern@thomsonreuters.com

**Editors**

Aditi Mene  
aditi.mene@thomsonreuters.com

Charlotte Wylie  
charlotte.wylie@thomsonreuters.com

**Editorial Publishing Co-ordinator**

Nicola Pender  
nicola.pender@thomsonreuters.com

Published in August 2015 by Thomson Reuters (Professional) UK Limited  
Friars House, 160 Blackfriars Road, London, SE1 8EZ  
(Registered in England & Wales, Company No 1679046.  
Registered Office and address for service:  
2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG)

A CIP catalogue record for this book is available from the British Library.

ISBN: 9780414050990

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# PREFACE

Omar Shah, LATHAM & WATKINS LLP

“..[I]f he is so powerful that he can act like this and yet prevent you individually from obtaining satisfaction from him, you ought all of you, in common and on behalf of all, now that he is in your grasp, to punish him as the common enemy of the State” (*Demosthenes, Speeches, 21.142, translated by A. T. Murray, Harvard University Press; London, William Heinemann Ltd. 1939*).

“...since [the defendant] has not paid the penalty for his crimes individually, you must exact satisfaction now for all of them collectively” (*Lysias “Against Nicomachus”, 30.6, translated by S.C. Todd, University of Texas Press, 2000*).

Since at least antiquity, human societies around the world have grappled with the problem of how to achieve redress, in a fair and just process, for conduct that is alleged to have caused injury to more than one person, and thus to that collective and arguably to society as a whole.

Ancient Athenian democracy opted for a system of private enforcement where individual citizens could bring claims in court (generally pleading in person before a jury of 201 to 501 citizens) on behalf of themselves and also of the state. In the absence of any formal system of public enforcement, private enforcement was encouraged by for example allowing successful prosecutors in suits recovering state property to collect a portion of the judgment. As a result, litigation tended to be irregular and unpredictable, driven by private interests rather than any conception of the public interest. Parties with greater financial resources and social clout had strong advantages both in court (better speeches; better delivery; greater social standing before the jury) and afterwards in terms of ability to enforce (the absence of state mechanisms meant that verdicts also had to be privately enforced) (*Adriaan Lanni, Social Norms in the Courts of Ancient Athens, Journal of Legal Analysis, 2009, 691-736, DOI: 10.1093/jla/1.2.691*).

In grappling with the above problem, other societies have made different political choices to the Ancient Athenians on issues such as:

- The balance between public and private enforcement. Should the state have the monopoly over enforcement in a particular area and if not what should be the proper scope for any system of private enforcement?
- How best to structure a system of private enforcement to achieve the society’s goals. Who can sue and for what and on whom is the judgment to be made binding?
- How to encourage private enforcement. Should contingency fees be allowed and/or should the loser pay the costs of the litigation?

As a result of the choices made by different societies around the world to reconcile the different interests of individuals (including corporations both as plaintiffs and defendants), collectives and society as a whole, one can find many collective redress forms in different jurisdictions, some of which are confined to particular fields, while others are of more general application. These include class actions, group actions, test cases, representative actions and derivative actions as well as collective ADR mechanisms including collective

arbitration, mediation or voluntary redress (see for example, *Wrбка, Van Utsel and Siems in "Collective actions, enhancing access to justice and reconciling multilayer interests?"*, Cambridge University Press 2000, pages 9- 11 who refer to the interests of individuals, collectives and society as a whole as "multilayer interests").

As noted by Professor Danov in his preface, the publication of this book comes at a point when important political choices relating to collective redress are being made by national governments forming part of the world's largest trading bloc, the European Union. In the absence of full EU political union and given the diversity of national legal systems and potentially very broad scope of issues that could be affected by collective redress, it did not prove possible to make those explicit political choices in advance and enshrine them in binding EU legislation. The EU's Recommendation on Collective Redress (Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU)) therefore constitutes non-binding "soft law" designed to move the process of making those choices forward in a consistent direction.

By contrast, given the greater depth of harmonisation and convergence between national laws in the specific area of EU competition law, the EU was able to create binding legislation in the form of the EU Damages Directive (Directive 2014/104/EU) designed to facilitate redress (collective or otherwise) for breaches of competition law across the EU.

Despite their different legislative bases, and as noted in detail in several chapters of this book, both the EU Recommendation and the EU Damages Directive are driving change in the area of collective redress for breaches of competition law in the EU. Indeed it is possible that this change could have significant influence in this area beyond the EU, or in fact be significantly influenced itself by developments in other non-EU jurisdictions. This is because of the increasing globalisation of the public enforcement of competition law particularly in the area of international cartels (through the efforts of for example, the UN, OECD and the International Competition Network of competition law enforcement agencies) which has led to increasing number of cases in which parallel public enforcement actions are then followed by parallel private enforcement actions in different jurisdictions around the world. This linkage in international cartel cases between public and private enforcement and across jurisdictions naturally gives rise to strategic and tactical decisions to be made by claimants and defendants in private enforcement actions to advance/protect their interests as effectively as possible in several jurisdictions at the same time. Some of those decisions result in particular outcomes, for example, regarding the scope of disclosure, that then drive changes to public enforcement in the EU and worldwide. This change in the area of collective redress for breaches of competition law may in turn lead to changes in other substantive areas where consumers seek redress, for example, product liability, securities law or environmental claims.

This book, written in the form of specific national chapters as well as broader thematic chapters of more general application by leading firms in each jurisdiction, sets out how different societies around the world have made their choices in solving key aspects of the problem of collective redress. It should therefore allow parties seeking to bring or defend collective actions and public enforcers to analyse the current position as well as the future dynamic on key aspects of collective redress on a consistent basis across 25 strategically important jurisdictions worldwide.

Putting this book together has truly been a "collective" effort and my thanks to all the chapter authors, the highly professional team at Thomson Reuters and the team here at Latham & Watkins; Simon Bushell, Charles Courtenay, Anuj Ghai, Amanda Wadey, Calum Warren and David Zhou, without whom this would not have been possible.

# FOREWORD

*Dr Milhail Danov, UNIVERSITY OF LEEDS*

The cross-border nature of many business activities nowadays strongly suggests that mass harm may be often caused to numerous injured parties residing (or doing business) in different countries. Even if the injured parties had already decided to sue the wrongdoer, they (and their legal advisers) would need to carefully consider where to bring their class/collective actions. The national procedural rules and the specific rules for bringing class/collective actions are important because there appear to be divergent collective redress regimes, representing the diverse legal cultures across Europe. The need for making jurisdictional comparisons becomes a real issue which lawyers advising multinational companies and injured parties would need to carefully consider in a cross-border context.

The editor and all the contributors should be praised for producing this practitioner-led volume, including national chapters from over 25 jurisdictions. An important feature of the book, edited by Omar Shah, is that all chapters are written by legal practitioners who are well aware of the issues which potential litigants would need to consider when deciding whether and where to sue.

Each national chapter provides responses to a set of concrete questions about:

- The definition of class/collective actions.
- Standing to sue.
- The different procedural rules in place.
- Evidence.
- The procedural timeframe.
- The level of litigation costs and available funding schemes.
- The possibilities to obtain an effective remedy (and/or force a settlement).

The recent legislative developments (for example, Consumer Rights Act 2015; Draft Competition Appeal Tribunal Rules) are factored in as well. Moreover, there is a separate chapter which makes a review of the recent EU legislative initiatives and interventions, specifying the main EU principles endorsed in the area. In their analyses of the jurisdictional rules derived from the Brussels I Regulation (recast), the authors conclude that a level of uncertainty in the area remains, suggesting that a reference to the CJEU may need to be made in an appropriate case.

The book is very topical in the light of the following developments at EU level. First, in June 2013, the European Commission published its Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under EU law. Secondly, in March 2014, the EU Civil Justice Agenda for 2020 specified that national procedural rules should not make it excessively difficult for injured parties to obtain effective remedies for breach of rights derived from EU law in cross-border cases (*paragraph 4.1.ii, COM (2014) 144*). Thirdly, in May 2015, the European Commission opened a procedure for awarding a service contract for “[a]n evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of

the procedural protection of consumers under EU consumer law" (<http://ted.europa.eu/udl?uri=TED:NOTICE:188196-2015:TEXT:EN:HTML&tabId=1>).

Therefore, the need for setting up effectively functioning collective redress mechanisms in Europe is as important as ever.

This work on collective actions, reviewing the various national regimes, is much needed and highly recommended.

# SWEDEN

Krister Azelius and Maria Maaniidi, VINGE



## OVERVIEW OF CLASS/COLLECTIVE ACTIONS AND CURRENT TRENDS

### 1. WHAT IS THE DEFINITION OF CLASS/COLLECTIVE ACTIONS IN YOUR JURISDICTION? ARE THEY POPULAR AND WHAT ARE THE CURRENT TRENDS?

#### **Definition of class/collective actions**

Under the Swedish Group Proceedings Act (2002:599), a group action is an action brought by a claimant acting as a representative for a group of persons. The action has legal effects for the group members, although such members are not parties to the case.

The term group action will be used in this Q&A to refer to actions brought under the Group Proceedings Act, as this is the English term used by the Swedish Government and Ministry of Justice.

#### **Use of class/collective actions**

The Group Proceedings Act has only been in force since January 2003 and has not yet been used to a great extent. Therefore, there are no historical matters of interest regarding the use of group actions in Sweden. Group actions are not commonly used as a method of settling disputes in Sweden.

The procedure for joint adjudication of similar cases under the Swedish Code of Judicial Procedure (1942:740) is more commonly used to settle disputes involving several claimants, and is therefore of more practical importance. The Code of Judicial Procedure and case law on joint adjudication adopt a relatively liberal approach to joint adjudication of similar cases brought by several claimants. Since joint adjudication is governed by the provisions of the Code of Judicial Procedure, the same rules apply as for individual civil cases.

A group action cannot be brought unless the majority of the claims to which the action relates cannot equally be pursued through individual claims that are jointly adjudicated under the Code of Judicial Procedure (*section 8, Group Proceedings Act*).

This Q&A primarily focuses on the specific regulation of group actions in Sweden under the Group Proceedings Act.

#### **Current trends**

Few group actions are brought under the Group Proceedings Act. There are therefore no general trends or recent developments in relation to group actions in Sweden.

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## REGULATORY FRAMEWORK

### 2. WHAT ARE THE PRINCIPAL SOURCES OF LAW AND REGULATIONS RELATING TO CLASS/COLLECTIVE ACTIONS? WHAT ARE THE DIFFERENT MECHANISMS FOR BRINGING A CLASS/COLLECTIVE ACTION?

#### **Principal sources of law**

The Group Proceedings Act, which entered into force on 1 January 2003, contains specific procedural rules on group actions and is applicable to all civil claims. The provisions of the Code of Judicial Procedure also apply to group proceedings unless otherwise stated in the Group Proceedings Act. Accordingly, most of the provisions of the Code of Judicial Procedure apply in the context of group actions.

The Group Proceedings Act is purely procedural and does not affect the provisions of substantive law.

For claims based on environmental law, the Environmental Act (1998:808) contains, in addition to the Group Proceedings Act, specific provisions governing group proceedings (*Chapter 32*).

In addition, the Code of Judicial Procedure contains provisions regarding the joint adjudication of similar cases brought by several claimants (*see Question 1, Use of class/collective actions*).

#### **Principal institutions**

In Sweden, group actions are heard by courts of general jurisdiction. The government has designated 21 district courts to examine cases under the Group Proceedings Act. There is at least one competent district court in each county. Group actions based on environmental law are examined by the district courts that are designated as environmental courts (five in total).

Disputes between consumers and business operators can be brought as group actions by the Consumer Ombudsman before the National Board for Consumer Disputes (*Allmänna reklamationsnämnden*) (ARN). The National Board for Consumer Disputes is not a court and its recommendations are not legally binding. See *Question 23* for more information on the National Board for Consumer Disputes.

No institution or body has judicial oversight or supervision of the group action process.

There are no jurisdictional issues of great importance related to group actions under the Group Proceedings Act. The competence of the district courts is determined according to the rules of the Code of Judicial Procedure. The general rule in Sweden is that jurisdiction is determined on the basis of the defendant's legal domicile. Therefore, in cases where the competence of the district courts is based on the general rule, there is no difference between group actions and individual civil claims. However, in certain cases, jurisdiction is based on other factors (for example, the place where the damage occurred or the place where the defendant runs its business). In such cases, the claims of all group members must be heard by the same court. Therefore, the district court in question must have jurisdiction over all claims that are handled by the court.

### Different mechanisms

In Sweden, a claimant can file a summons application to bring one of the following types of group action:

- Private group action.
- Organisation group action.
- Public group action.

See *Question 5, Potential claimant* for more details on the three types of group action.

A claimant that brings an individual civil claim in a district court can also apply in writing to the district court to request that the claim be converted into group proceedings.

In addition, a group action can also be filed by the Consumer Ombudsman before the National Board of Consumer Disputes (*see Question 23*).

### 3. ARE CLASS/COLLECTIVE ACTIONS PERMITTED/USED IN ALL AREAS OF LAW, OR ONLY IN SPECIFIC AREAS?

The Group Proceedings Act is not restricted to certain areas of civil law. Any legal claim that can be heard by courts of general jurisdiction under the Code of Judicial Procedure can also be litigated as a group action under the Group Proceedings Act, provided that other requirements in the Act are fulfilled. Therefore, claims that are heard by special civil courts, including the Market Court and the Labour Court, cannot be litigated as group proceedings. This also applies if the claim is filed in a court of general jurisdiction but appeals must be brought before a special civil court. Certain labour and marketing law claims are therefore excluded from the scope of the Group Proceedings Act.

#### Product liability

Group actions are permitted in product liability cases.

#### Environmental law

Group actions are permitted in the area of environmental law. Special provisions of the Environmental Act apply in addition to the Group Proceedings Act.

#### Competition law

Group actions are permitted in competition law cases.

#### Pensions disputes

Group actions are permitted for pensions disputes.

#### Financial services: consumer redress

Group actions are permitted in financial services/consumer redress cases.

### Other areas of law/policy

As the Group Proceedings Act is purely procedural, the law on group actions interacts with all areas of substantive law that can give rise to group actions.

Claims for damages resulting from the commission of a crime can be handled in criminal proceedings, but not when such claims are brought as a group action. If a group of persons has claims for damages resulting from a crime, such persons can apply for their claims to be tried in either (after their claims have been separated from the criminal matter):

- Group action proceedings under the Group Proceedings Act.
- Joint adjudication proceedings under the Code of Judicial Procedure.

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## LIMITATION

### 4. WHAT ARE THE KEY LIMITATION PERIODS FOR CLASS/COLLECTIVE ACTIONS?

The Group Proceedings Act does not contain specific limitation periods for group actions. However, there are numerous limitation periods under substantive law which can affect access to court proceedings. The applicable limitation periods for group actions are therefore governed by the law applicable to the merits of the case.

Most limitation periods do not require that the claim must be commenced within a certain period of time, but rather that the opposite party must be notified of the claim within a certain period of time. The court will not uphold the claim in the event of a failure to give timely notification. However, the courts cannot enforce limitation periods *ex officio*, and these must be invoked by a party.

---

## STANDING AND PROCEDURAL FRAMEWORK FOR BRINGING AN ACTION

### STANDING

### 5. WHAT ARE THE RULES FOR BRINGING A CLAIM IN A CLASS/COLLECTIVE ACTION?

#### Definition of class

The summons application for a group action must contain details concerning the group to which the action relates, and the names and addresses of all members of the group if this is necessary for managing the case (*section 9, Group Proceedings Act*). Therefore, the group members can be identified individually or collectively (for example, as “all persons that bought shares in company X in 2015”).

## Potential claimant

There are three types of group actions under the Group Proceedings Act:

- Private group actions (*section 4, Group Proceedings Act*).
- Organisation group actions commenced (*section 5, Group Proceedings Act*).
- Public group actions (*section 6, Group Proceedings Act*).

**Private group actions.** A private group action can be commenced by any natural person or legal entity that has a claim subject to the action.

**Organisation group actions.** An organisation group action can be commenced by a non-profit organisation that, in accordance with its statutes, protects either:

- The interests of consumers or wage-earners in disputes between consumers and business operators.
- Nature conservation and environmental interests.

An organisation group action can also be brought by an association of professionals in the fishing, agricultural, reindeer or forestry industries.

Contrary to what was initially suggested during the legislative procedure, there is no requirement regarding how long the non-profit association must have existed before starting a claim. Therefore, a non-profit association can be created solely for the purpose of bringing a group claim (which has happened in some cases). The non-profit association does not need to be approved by the state.

An organisation group action must concern either consumer law or environmental law. Regarding consumer law, the dispute must concern goods, services or other utilities that a business operator offers to consumers. However, in special cases, the conditions for bringing an organisation group action can be applied less strictly, provided that there are significant advantages in the disputes being jointly adjudicated, taking into account the adjudication of the claim and other circumstances.

**Public group actions.** A public group action can be commenced by certain public authorities (designated in advance by the government) that, taking into consideration the subject of the dispute, are suitable to represent the members of the group in question. To date, the Consumer Ombudsman and the Environmental Protection Agency are the only authorities approved to start claims through public group actions.

According to the preparatory works of the Group Proceedings Act, a public group action should only be commenced if either:

- A private or organisation group action is not likely to be brought.
- There is a particular public interest in starting a public group action.

A public group action commenced by the Consumer Ombudsman can only relate to consumer disputes. According to the specific instructions given by the government, such a claim can only be pursued if it is in the public interest. If the court orders consumers to pay litigation costs, the state will bear such costs.

The Environmental Protection Agency has the authority to bring claims for damages in the environmental courts. The Agency can bring a group action if it is necessary to satisfy urgent public environmental interests. If the court orders the Environmental Protection Agency to pay litigation costs, the state will bear such costs.

### Claimants outside the jurisdiction

A claim under the Group Proceedings Act can be brought on behalf of individuals from several jurisdictions. The same rules regarding jurisdiction apply as for individual civil claims, regardless of whether certain individual members of the group come from other jurisdictions.

There are no specific issues of “forum shopping” related to group actions. Potential issues of “forum shopping” in relation to both group actions and individual civil claims are minimised by the application of:

- Regulation (EC) 44/2001 replaced by Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation).
- Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention).

### Professional claimants

The purchase and pursuit of claims is not prohibited under Swedish law. The authors are not aware of any large-scale purchasing of consumers’ claims having taken place in Sweden.

### Other

There are no other relevant considerations.

## QUALIFICATION, JOINDER AND TEST CASES

### 6. WHAT ARE THE KEY PROCEDURAL ELEMENTS FOR MAINTAINING A CASE AS A CLASS ACTION?

#### Certification/qualification

A group action is started by filing a summons application in accordance with the Code of Judicial Procedure. The court examines the application in the usual manner when considering the general requirements for initiating proceedings. However, as group actions are intended to complement individual legal proceedings, a claim under the Group Proceedings Act will only be heard by the court if certain specific conditions are satisfied, which must be examined by the courts *ex officio*. The following conditions must be satisfied (*sections 8 and 11, Group Proceedings Act*):

- The action is based on circumstances that are common or similar to the claims of the members or the group.
- Group proceedings do not appear to be inappropriate having regard to the claims of group members (for example, having regard to the cause of action and any substantial differences between the claims).
- Most of the claims to which the action relates cannot be equally and adequately pursued through personal actions by the individual members of the group.
- The group is appropriately defined, taking into consideration its size, scope and other factors.

- The claimant can appropriately represent the members of the group, having regard to:
  - its interest in the substantive matter;
  - its financial capacity to bring a group action; and
  - the general circumstances of the case.
- A private group action and an organisation action must be brought by a member of the Swedish Bar Association (*advokat*).

If the court finds that all the conditions above are satisfied, the action will proceed as a group action under the Group Proceedings Act. Otherwise, the court will dismiss the action. There is no requirement for certification of the group by the court.

A group action can also be commenced where a claimant in an ordinary civil proceeding applies to the district court to request the reallocation of the claim to group proceedings. Such an application will only be granted if both:

- The specific conditions to bring a group action are satisfied (*see above*).
- The defendant consents or it is clearly apparent that the advantages of group proceedings outweigh the inconvenience of such proceedings for the defendant.

If the district court where the civil claim is pending lacks jurisdiction to adjudicate group actions, the application will be transferred to a competent court. However, if the application is manifestly unfounded, the court can reject the application immediately without transferring it to a competent court (*section 10, Group Proceedings Act*).

### **Minimum/maximum number of claimants**

The Group Proceedings Act does not specify any minimum number of claimants required before a group action can be brought. However, the number of claims must be taken into account when deciding whether a group action should be permitted (*section 8, Group Proceedings Act*).

### **Joining other claimants**

If the claimant's application to commence group proceedings is not dismissed, the members of the group (that is, the persons who meet the claimant's description) must be notified of the group proceedings (*section 13, Group Proceedings Act*). Such notification must normally be given by the court (or by a party in certain specific circumstances) by way of personal service or any other suitable form (for example leaflets, newspaper or radio advertisements). There are no legal restrictions on such advertising. However, members of the Swedish Bar Association are subject to rules that restrict "ambulance chasing".

Group actions are initiated on an opt-in basis through personal notice given to the court by each group member (*section 14, Group Proceedings Act*). Each member of the group must give notice to the court in writing, within the period of time determined by the court, that he or she wishes to be included in the group action. In the absence of such notice, the member is deemed to have withdrawn from the group.

New group members can join the litigation at a later stage provided that this does not cause any significant delay in the determination of the case or other substantial inconvenience for the defendant (*section 18, Group Proceedings Act*).

## Test cases

There are no provisions, either in the Code of Judicial Procedure or in the Group Proceedings Act, that govern the procedure for initiating, handling or determining test cases. However, judgments only have legal effect between the parties to the case. Therefore, test cases can only have an evidential effect on related claims.

## TIMETABLING

### 7. WHAT IS THE USUAL PROCEDURAL TIMETABLE FOR A CASE?

The procedural timetable for a case is set on a case-by-case basis and depends, among other factors, on the complexity of the case and the specific court (or judge) that is handling the case. There is therefore no usual timetable. The case timetable is usually set at the case management conference. In Sweden, a trial usually lasts between one and a half to two years in the district court, and another one to one and a half years in the court of appeal.

## EFFECT OF THE AREA OF LAW ON THE PROCEDURAL SYSTEM

### 8. DOES THE APPLICABLE PROCEDURAL SYSTEM VARY DEPENDING ON THE RELEVANT AREA OF LAW IN WHICH THE CLASS/COLLECTIVE ACTION IS BROUGHT?

The applicable procedural system does not vary depending on the relevant area of law in which the group action is brought, except for group actions based on environmental law. Environmental group actions are heard by the district courts that are designated as environmental courts. Environmental courts consist of both environmental experts and ordinary judges.

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## FUNDING AND COSTS

### FUNDING

### 9. WHAT ARE THE RULES GOVERNING LAWYER'S FEES IN CLASS/COLLECTIVE ACTIONS?

The general rule under the Code of Conduct of the Swedish Bar Association is that contingency fees are not allowed. However, contingency fees can be allowed in group actions and other cases where access to justice may be denied if contingency fees are not allowed. Contingency fees are very rarely allowed in practice.

The Group Proceedings Act regulates certain fee arrangements referred to as risk agreements (*sections 38 to 41*). A claimant can conclude an agreement with a lawyer under which the lawyer's fees will be determined with regard to the extent to which the claims of the group members are successful. However, the agreement can only be binding on the group members if it has been approved by a court. Risk agreements can only be approved

if they are reasonable in light of the nature of the substantive matter. In addition, the agreement must be in writing and specify how fees will deviate from customary fees if the claim is successful or dismissed. Additionally, the fees under the risk agreement must be set in a way that gives no reason to question the lawyer's independence. Risk agreements cannot be approved if fees are based solely on the value of the case.

A risk agreement is not binding on the defendant. Therefore, a losing defendant cannot be ordered to pay the claimant's legal costs that are higher than normal legal fees that are reasonably incurred.

#### 10. IS THIRD PARTY FUNDING OF CLASS/COLLECTIVE ACTIONS PERMITTED?

There are no rules that restrict third party funding under Swedish law.

#### 11. IS FINANCIAL SUPPORT AVAILABLE FROM ANY GOVERNMENT OR OTHER PUBLIC BODY FOR CLASS/COLLECTIVE ACTION LITIGATION?

The legal aid system in Sweden is subsidiary to the private insurance system. Governmental legal aid is not granted if the claimant has, or should have had, insurance covering the matter. On private insurance see *Question 12*.

For cases tried under the Group Proceedings Act, only the claimant and not the group members can be granted public legal aid. In practice, this means that public funding only covers a very small portion of the actual costs associated with a group action.

Public legal aid is restricted to claimants unable to fund the legal costs themselves. Individuals with a certain level of annual income do not qualify for public legal aid. In addition, a claimant that benefits from legal aid will usually need to self-fund a portion of the costs, depending on its level of income. When public legal aid is granted, it normally covers costs for 100 hours of work and does not cover the counterparty's costs if the case is unsuccessful.

The government bears the legal costs when the Consumer Ombudsman or the Swedish Environmental Protection Agency starts group proceedings.

#### 12. ARE OTHER FUNDING OPTIONS AVAILABLE TO CLAIMANTS IN CLASS/ COLLECTIVE ACTIONS?

Most private home insurance policies cover legal costs when a claimant initiates an action under the Group Proceedings Act. Legal expenses cover includes liability to pay the costs of the counterparty, but is always restricted to a certain (relatively low) maximum amount. Usually, only the claimant, and not the group members, can be granted legal expenses cover from an insurance provider.

### COSTS

#### 13. WHAT ARE THE KEY RULES FOR COSTS/FEEES IN CLASS/COLLECTIVE ACTION LITIGATION?

Costs are assessed by the court at the end of the trial. The same rules apply in both group actions under the Group Proceedings Act and normal civil cases. The "loser pays" principle

applies as a general rule, meaning that the losing party must pay all costs (for example, issuance fees, cost of witnesses and legal counsel). There is no cap imposed on costs, although only costs that are reasonably incurred to safeguard the party's interest must be reimbursed (*Code of Judicial Procedure*). Consequently, if the losing party has not accepted the successful party's claim for costs, the court will determine whether the winning party's litigation costs are reasonable.

Only the parties are responsible for the costs. This means that the claimant (that is, the individual, organisation or authority that represents the group) is responsible for the costs if the case is lost. The other group members are generally not parties and are therefore not responsible for the legal costs (*section 33, Group Proceedings Act*).

However, group members can be held liable for costs under the same rules as for individual civil cases if they have caused costs to increase as a result of their conduct (*section 35, Group Proceedings Act*).

In addition, a group member can be held liable for costs if there are additional costs related to a risk agreement (*see Question 9*), which the defendant has not been ordered to pay (*section 34, Group Proceedings Act*). The defendant can only be ordered to pay standard legal fees, not any extra costs relating to any risk agreement between the claimant and its lawyer.

If the claim is successful and the defendant cannot pay, each member of the group must pay his share of the costs to the claimant (*section 34, Group Proceedings Act*).

If a member of the group who is not the claimant discontinues his claim, there are no costs consequences. A former claimant who has been replaced for being no longer appropriate to represent the group can be responsible for litigation costs in certain circumstances (*section 31, Group Proceedings Act*).

The Group Proceedings Act does not contain any rules regarding costs if the case is settled. However, when a case is settled, the parties normally bear their own costs.

## KEY EFFECTS OF THE COSTS/FUNDING REGIME

### 14. WHAT ARE THE KEY EFFECTS OF THE CURRENT COSTS/FUNDING REGIME?

The key effects of the current costs/funding regime is that group actions under the Group Proceedings Act are not an attractive method for settling disputes, especially private group actions. The responsibility of the claimant to bear the costs involves a considerable financial risk for the claimant and deters many potential claimants from bringing group actions. The forms of funding available (that is, from insurance companies or the government (*see Questions 11 and 12*)) do not help as the compensation offered is not sufficient to cover expected litigation costs if the case is lost. While it is possible to conclude risk agreements, lawyers are not keen on either assuming the economic risk involved with such agreements, or concluding such agreements at all in light of the provisions in the Code of Conduct of the Swedish Bar Association (*see Question 9*).

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## DISCLOSURE AND PRIVILEGE

### 15. WHAT IS THE PROCEDURE FOR DISCLOSURE OF DOCUMENTS IN A CLASS/ COLLECTIVE ACTION?

#### **Before litigation**

There are no obligations to disclose documentary evidence before court proceedings are commenced either in group actions or ordinary litigation.

#### **During litigation**

All documentary evidence that a party wishes to invoke must be disclosed as part of the pre-trial procedure. Parties are not required to disclose all documentary evidence in their possession, unless the counterparty requests disclosure of certain and identified pieces of evidence. Such requests can only be granted if the court considers that the piece of evidence is significant for the adjudication of the case.

### 16. ARE THERE SPECIAL CONSIDERATIONS FOR PRIVILEGE IN RELATION TO CLASS/ COLLECTIVE ACTIONS?

There is no concept of privilege in Sweden. However, correspondence between a lawyer and his client can always be kept confidential. In addition, a party cannot be ordered to disclose documents that include trade secrets, except in exceptional circumstances. There are no special considerations on these issues in the context of group actions.

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## EVIDENCE

### 17. WHAT IS THE PROCEDURE FOR FILING FACTUAL AND EXPERT WITNESS EVIDENCE IN CLASS/COLLECTIVE ACTIONS?

The procedure for filing factual and expert witness evidence under the Code of Judicial Procedure applies to cases tried under the Group Proceedings Act. Generally, there are no restrictions on the evidence that can be filed (such as length of statements or issues that can be covered). Proof of circumstances that are generally known and proof of legal rules are not required. The courts can also reject facts and evidence adduced by a party if it considers that such facts or evidence are:

- Not important in the case.
- Unnecessary.
- Evidently of no effect.

A party can request an expert witness to submit a written statement/expert report. Such statements/expert reports must be, and usually are, exchanged prior to trial. The report must state the reasoning and circumstances on which the expert's opinion is based. No witness statements are submitted for witnesses of fact. However, parties are not allowed

to present new facts not previously invoked in submissions through the hearing of a factual witness.

An expert witness can be appointed either by the court or a party. Before the court can appoint an expert, the parties must be invited to state their views and, if the parties agree on one expert, then that expert is duly appointed provided that he is found suitable and there is no impediment to his appointment. However, the court can also appoint an additional expert.

An expert who has submitted a written opinion must also be examined orally if either:

- One party so requests, provided that such examination is not plainly without importance.
- The court otherwise considers it necessary.

Before the oral examination, the expert must take the oath. Courts rarely appoint experts in practice.

More commonly, the parties present their own expert evidence, such as written statements combined with an oral examination of the expert. Before the oral examination, the expert must also take the oath.

There are no restrictions on the nature or extent of expert evidence.

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## DEFENCE

### 18. CAN ONE DEFENDANT APPLY TO JOIN OTHER POSSIBLE DEFENDANTS IN A CLASS/COLLECTIVE ACTION?

#### **Joining other defendants**

The application procedure for one defendant to join other defendants to a group action is not regulated under the Group Proceedings Act. This situation is governed by the general rules on third party intervention under the Code of Judicial Procedure. Third party intervention is available if a third party starts an action against one or both parties which concerns the same matter at issue. Therefore, a defendant cannot apply to join other possible defendants in a group action without commencing an action either against the claimant or the other defendants.

#### **Rights of multiple defendants**

There are no rules under Swedish law that restrict or prevent multiple defendants from entering into “joint defence agreements” or other arrangements that permit the sharing of confidential information or any other co-operation in the proceedings.

Multiple defendants can be represented by the same lawyers provided that there is no actual or potential conflict of interest. Members of the Swedish Bar Association are bound by the Code of Conduct of the Swedish Bar Association, which contains strict regulations on conflicts of interest. However, in most civil claims with multiple defendants in Sweden, each defendant engages its own lawyer, especially in complex cases. This does not prevent the defendants’ lawyers from fully or partially co-operating in relation to the

defence. Such co-operation can include, for example, the instruction of joint experts or witnesses.

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## DAMAGES AND RELIEF

### 19. WHAT IS THE MEASURE OF DAMAGES UNDER NATIONAL LAW IN THE FIELD OF CLASS/COLLECTIVE ACTIONS?

#### **Damages**

There is no difference between the types of damages recoverable for claims brought as group actions and regular individual claims under Swedish contract or tort law. As a general rule, all types of quantifiable damages (except punitive damages) are available, including the value of damaged property. As a general rule, damages are only awarded for proven economic losses.

There is no cap on the quantum that can be recovered, either from a single defendant, or overall.

The court apportions damages between the group members based on the economic loss suffered by each member. The court cannot award a lump sum to be divided among the group members; the judgment must specify the amount awarded to each claimant or group member.

#### **Recovering damages**

Damages paid by one defendant can be subsequently recovered by that defendant from other persons responsible for the conduct complained of if the defendant files an action for recourse which is upheld by the court.

#### **Interest on damages**

There are no special rules applicable to the payment of interest in the field of group actions. Interest on damages runs from the date of the judgment until the damages are paid.

### 20. WHAT RULES APPLY TO DECLARATORY RELIEF AND INTERIM AWARDS IN CLASS/COLLECTIVE ACTIONS?

#### **Declaratory relief**

The same rules apply for group actions as for individual civil cases. However, there are a wide range of options available for declaratory relief under the Code of Judicial Procedure.

A claim for declaratory relief must be examined by the court if there is uncertainty on the existence of a legal relationship and the uncertainty exposes the claimant to a detriment. In addition, a request for declaratory relief can be granted if determination of the matter at issue depends on the existence or non-existence of a certain disputed legal relationship.

Declaratory relief can be applied for when initiating proceedings (in the summons application) or during the proceedings. Declaratory relief can be granted during the proceedings as an intermediate judgment, or in the final judgment.

In light of the low number of group actions in Sweden, declaratory relief is not commonly applied for in the field of group actions.

### **Interim awards**

There are no specific rules regarding interim awards under the Group Proceedings Act, and the provisions of the Code of Judicial Procedure regarding interim measures apply to group actions.

Interim awards can be applied for/granted before proceedings have been initiated or during the proceedings. When there are no pending proceedings, an application must be made in writing and addressed to the court that has jurisdiction over the dispute. In such a case, proceedings must be commenced within one month from the day of the interim award. When proceedings are pending, an application for interim measures can be filed orally or in writing with the court that handles the case.

The interim awards available include:

- Sequestration of an identified asset.
- Sequestration of the defendant's assets up to the value required to secure the claimant's right.
- Other measures deemed necessary to secure the claimant's right (for example, a prohibition order subject to a default fine, an order to perform a certain act or an order subject to a default fine).

In principle, the defendant will be ordered to reply to the application for interim measures. However, if any delay would jeopardise the applicant's claim, the court can impose an interim order immediately. As a general rule, the claimant must deposit security with the court for the loss that the opposing party may suffer as a result of the interim award.

In light of the low number of group actions in Sweden, interim awards are not commonly applied for in the field of group actions.

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## SETTLEMENT

### 21. WHAT RULES APPLY TO SETTLEMENT OF CLASS/COLLECTIVE ACTIONS?

#### **Settlement rules**

Under the Group Proceedings Act, group members are not bound by a settlement made by the claimant unless it is approved by the court. The court will approve a settlement unless it is discriminatory against some group members or is otherwise obviously unreasonable (*section 26, Group Proceedings Act*).

## Separate settlements

If there is more than one defendant, they can settle separately. The situation is not regulated by the Group Proceedings Act, and the provisions of the Code of Judicial Procedure apply in this situation.

The effect of one defendant settling separately is that the proceedings against the other defendants will continue, provided that the remaining defendants choose not to settle.

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## APPEALS

### 22. DO PARTIES HAVE A RIGHT TO APPEAL DECISIONS RELATING TO CLASS ACTIONS, SUCH AS A DECISION GRANTING OR DENYING CERTIFICATION OF A CLASS ACTION?

In addition to the right to appeal under the Code of Judicial Procedure, parties are entitled to appeal specific decisions relating to a group action under the Group Proceedings Act (*sections 42 to 48*).

The court does not make any specific decision granting or rejecting certification of a group action (*see Question 6, Certification/qualification*). However, if the group action is dismissed by the court, the claimant can appeal the decision under the Code of Judicial Procedure. The decision can be appealed to the competent court of appeal within three weeks from the date of the decision. Permission to appeal is required.

Specific group action decisions that can be appealed under the Group Proceedings Act include those that:

- Reject the claimant's request to bring a private group action or organisation group action without a lawyer (*advokat*) acting for the group.
- Consider a request for approval of a risk agreement (*see Question 9*).

To appeal such decisions, the party must give notice of appeal to the court where the case is heard either:

- Immediately if the decision is made at a hearing.
- Within one week from the date the party receives notice of the decision.

If the party fails to give notice, the right to appeal is lost. The decision must be appealed to the court of appeal within three weeks from the date of the decision. Permission to appeal is required.

A judgment of a district court can be appealed to the court of appeal by the claimant or defendant within three weeks from the date of the judgment. Permission to appeal is required.

Under the Group Proceedings Act, a group member is entitled to appeal a judgment or a final decision either on behalf of the group or individually. If the appeal is made individually, the court of appeal will not handle the case in accordance with the Group Proceedings Act. Permission to appeal is required.

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## ALTERNATIVE DISPUTE RESOLUTION

### 23. IS ALTERNATIVE DISPUTE RESOLUTION (ADR) AVAILABLE IN CLASS/COLLECTIVE ACTIONS?

ADR is available in group actions.

It is possible to pursue third party voluntary mediation in a private dispute under the Mediation Act (2011:860). Mediation is voluntary and is conducted by two or more parties with the help of a third party mediator. An agreement that has been reached by two parties during mediation can be officially sanctioned by the court following a joint application.

Disputes between consumers and business operators can be brought before the National Board for Consumer Disputes (*Allmänna reklamaationsnämnden*) (ARN). Such disputes can also be brought as group actions by the Consumer Ombudsman. The National Board for Consumer Disputes is not a court and its recommendations are not legally binding or enforceable. The procedure before the Board is based solely on written submissions. Therefore, the risk of large procedural costs is reduced. The dispute must involve a certain minimum value (about EUR20 to EUR200) and notification to the Board must be submitted within six months after the business rejected the consumer's claim.

Arbitration can be used to resolve disputes if the parties agree to do so. In consumer disputes, arbitration can only be used if the arbitration agreement is concluded after the dispute has arisen. There is no special consumer or group arbitration procedure available in Sweden.

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## PROPOSALS FOR REFORM

### 24. ARE THERE ANY PROPOSALS FOR REFORM CONCERNING CLASS/COLLECTIVE ACTIONS?

An official evaluation of the Group Proceedings Act was conducted in 2008. Minor changes to the Act were proposed, but none of these proposals were enacted. The authors are not aware of any other plan to reform the rules on group actions.

The authors are not aware of any proposals for reform relating to the current funding/costs regime.

As far as the authors are aware, the European Commission's recommendations for reform concerning class actions will not at this stage affect the current regime in Sweden.

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## ONLINE RESOURCES

### GROUP PROCEEDINGS ACT (ENGLISH TRANSLATION)

**W** [www.government.se/government-policy/judicial-system/group-proceedings-act/](http://www.government.se/government-policy/judicial-system/group-proceedings-act/)

**Description.** The Swedish Government's website provides access to the English translation of the Group Proceedings Act. The website was updated on 15 June 2015.

### CODE OF JUDICIAL PROCEDURE (ENGLISH TRANSLATION)

**W** [www.government.se/government-policy/judicial-system/the-swedish-code-of-judicial-procedure/](http://www.government.se/government-policy/judicial-system/the-swedish-code-of-judicial-procedure/)

**Description.** The Swedish Government's website provides access to the English translation of the Code of Judicial Procedure. The website was updated on 15 June 2015.

### FACT SHEET ON GROUP PROCEEDINGS

**W** [www.regeringen.se/contentassets/6f0809523f274ae4822ac6988f1e83f9/group-proceedings](http://www.regeringen.se/contentassets/6f0809523f274ae4822ac6988f1e83f9/group-proceedings)

**Description.** The Swedish Government's website provides access to a fact sheet regarding group proceedings published by the Ministry of Justice. The fact sheet is dated December 2002.

### EVALUATION OF THE GROUP PROCEEDINGS ACT

**W** [www.government.se/contentassets/bc2108232b1a4a3291505fce2299fa62/evaluation-of-the-group-proceedings-act---summary-in-english](http://www.government.se/contentassets/bc2108232b1a4a3291505fce2299fa62/evaluation-of-the-group-proceedings-act---summary-in-english)

**Description.** The Swedish Government's website provides access to the evaluation of the Group Proceedings Act. The website was updated on 17 May 2015.

# CONTACT DETAILS

## GENERAL EDITOR

Omar Shah  
Latham & Watkins LLP  
99 Bishopsgate  
London EC2M 3XF  
United Kingdom

**T:** +44 20 7710 1103  
**E:** [omar.shah@lw.com](mailto:omar.shah@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

## EU JURISDICTIONAL OVERVIEW

Oliver Browne and Volker Schäfer  
Latham & Watkins LLP  
London office  
99 Bishopsgate  
London EC2M 3XF  
United Kingdom

**T:** +44 20 7710 1000  
**E:** [oliver.browne@lw.com](mailto:oliver.browne@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

Latham & Watkins LLP  
Reuterweg 20  
60323 Frankfurt am Main  
Germany

**T:** +49 69 6062 6000  
**E:** [volker.schaefer@lw.com](mailto:volker.schaefer@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

## OVERVIEW OF APPLICABLE EU LAW PRINCIPLES

Marguerite Sullivan and Rüdiger Lahme  
Latham & Watkins LLP  
Brussels office  
Boulevard du Régent, 43-44  
B-1000 Brussels  
Belgium

**T:** +32 2 788 6000  
**E:** [marguerite.sullivan@lw.com](mailto:marguerite.sullivan@lw.com)  
**E:** [ruediger.lahme@lw.com](mailto:ruediger.lahme@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

## ARGENTINA

María Morena Del Río  
Allende & Brea  
Maipú 1300, piso 11  
C1006ACT Buenos Aires  
Argentina

**T:** +54 11 4318 9957  
**F:** +54 11 4318 9999  
**E:** [mmdr@allendebrea.com.ar](mailto:mmdr@allendebrea.com.ar)  
**W:** [www.allendebrea.com.ar](http://www.allendebrea.com.ar)

## AUSTRALIA

Beverley Newbold, Richard Murphy and Kate Watts  
Minter Ellison  
Level 40, Governor Macquarie Tower  
1 Farrer Place  
Sydney 2000  
Australia

**T:** +61 2 9921 8888  
**F:** +61 2 9921 8123  
**E:** [beverley.newbold@minterellison.com](mailto:beverley.newbold@minterellison.com)  
**E:** [richard.murphy@minterellison.com](mailto:richard.murphy@minterellison.com)  
**E:** [kate.watts@minterellison.com](mailto:kate.watts@minterellison.com)  
**W:** [www.minterellison.com](http://www.minterellison.com)

**BELGIUM**

Hakim Boularbah  
Liedekerke Wolters Waelbroeck Kirkpatrick  
boulevard de l'Empereur 3 Keizerslaan  
1000 Brussels  
Belgium

**T:** +32 2 551 14 72  
**F:** +32 2 551 14 54  
**E:** [h.boularbah@liedekerke.com](mailto:h.boularbah@liedekerke.com)  
**W:** [www.liedekerke.com](http://www.liedekerke.com)

**London office**

Liedekerke Wolters Waelbroeck Kirkpatrick  
33 Sun Street  
London EC2M 2PY  
United Kingdom

**T:** +44 207 151 0360  
**F:** +44 207 151 0370  
**W:** [www.liedekerke.com/london-office](http://www.liedekerke.com/london-office)

**BRAZIL**

Tito Amaral de Andrade, Gláucia Mara Coelho  
and Gisela Mation  
Machado Meyer Sendacz Opice Advogados  
Avenida Brigadeiro Faria  
Lima, 3.144 – 11º andar  
CEP: 01451-000  
São Paulo – SP  
Brazil

**T:** +55 11 3150 7000  
**F:** +55 11 3150 7071  
**E:** [tandrade@machadomeyer.com.br](mailto:tandrade@machadomeyer.com.br)  
**E:** [gmcoelho@machadomeyer.com.br](mailto:gmcoelho@machadomeyer.com.br)  
**E:** [gmation@machadomeyer.com.br](mailto:gmation@machadomeyer.com.br)  
**W:** [www.machadomeyer.com.br](http://www.machadomeyer.com.br)

**CANADA**

Christopher Naudie and Gillian SG Scott  
Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8  
Canada

**T:** +416.362.2111  
**F:** +416.862.6666  
**E:** [cnaudie@osler.com](mailto:cnaudie@osler.com)  
**E:** [gscott@osler.com](mailto:gscott@osler.com)  
**W:** [www.osler.com](http://www.osler.com)

**CHINA**

Yao Feng and Linzhu Wang  
Broad & Bright Law Firm  
Suite 701, CBD International Plaza  
No. 16 Yong'andongli Jianguomenwai Avenue  
Chaoyang District  
Beijing 100022  
China

**T:** +86 8513 1818  
**F:** +86 8513 1919  
**E:** [yao\\_feng@broadbright.com](mailto:yao_feng@broadbright.com)  
**E:** [linzhu\\_wong@broadbright.com](mailto:linzhu_wong@broadbright.com)  
**W:** [www.broadbright.com](http://www.broadbright.com)

**FRANCE**

Frédéric Pradelles, Simon Benoit and  
Claire-Marie Carrega  
Latham & Watkins LLP  
45, rue Saint-Dominique  
Paris 75007  
France

**T:** +33 1 4062 2000  
**E:** [frederic.pradelles@lw.com](mailto:frederic.pradelles@lw.com)  
**E:** [simon.benoit@lw.com](mailto:simon.benoit@lw.com)  
**E:** [claire-marie.carrega@lw.com](mailto:claire-marie.carrega@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

**GERMANY**

Christoph Baus and Christine Gärtner  
Latham & Watkins LLP  
Die Welle  
Reuterweg 20  
60323 Frankfurt am Main  
Germany

**T:** +49 69 6062 6000  
**E:** [christoph.baus@lw.com](mailto:christoph.baus@lw.com)  
**E:** [christine.gaertner@lw.com](mailto:christine.gaertner@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

**INDIA**

Jasleen K Oberoi  
 Shardul Amarchand Mangaldas & Co.  
 Amarchand Towers  
 216 Okhla Industrial Estate  
 Phase III  
 New Delhi 110 020  
 India

**T:** +91 11 41590700  
**F:** +91 11 26924900  
**E:** [jasleen.oberoi@amsshardul.com](mailto:jasleen.oberoi@amsshardul.com)  
**W:** [www.amsshardul.com](http://www.amsshardul.com)

**INDONESIA**

Ahmad Maulana and Agnes Maria Wardhana  
 Assegaf Hamzah & Partners  
 Menara Rajawali 16th Floor  
 Jalan DR. Ide Anak Agung Gde Agung  
 Lot # 5.1 Kawasan Mega Kuningan  
 Jakarta 12950  
 Indonesia

**T:** +62 21 2555 7800  
**T:** +62 21 2555 7800  
**F:** +62-21 2555 7899  
**E:** [info@ahp.co.id](mailto:info@ahp.co.id)  
**W:** [www.ahp.co.id](http://www.ahp.co.id)

**IRELAND**

Niall Collins, Maureen O'Neill, Ailbhe Burke  
 and Jane Pilkington  
 Mason Hayes & Curran  
 South Bank House  
 Barrow Street  
 Dublin 4  
 Ireland

**T:** +353 1 614 5000  
**E:** [ncollins@mhc.ie](mailto:ncollins@mhc.ie)  
**E:** [moneill@mhc.ie](mailto:moneill@mhc.ie)  
**E:** [ailbheburke@mhc.ie](mailto:ailbheburke@mhc.ie)  
**E:** [jpilkington@mhc.ie](mailto:jpilkington@mhc.ie)  
**W:** [www.mhc.ie](http://www.mhc.ie)

**ISRAEL**

Gal Rozent, Hagai Ashlagi and Ran Karmi  
 Eshel, Ashlagi, Rozent, Law Offices  
 B.S.R Towers 3, 33rd Floor, 5 Kineret St.  
 Bnei-Brak, 5126237  
 Israel

**T:** +972 3 6931900  
**T:** +972 72 2575758  
**F:** +972 3 6931919  
**E:** [gal@legal-mind.co.il](mailto:gal@legal-mind.co.il)  
**E:** [hagai@legal-mind.co.il](mailto:hagai@legal-mind.co.il)  
**E:** [ran@legal-mind.co.il](mailto:ran@legal-mind.co.il)  
**W:** [www.legal-mind.co.il](http://www.legal-mind.co.il)

**ITALY**

Matteo Bay, Antonio Distefano, Alessio Aresu  
 and Fabrizio Santoni  
 Latham & Watkins LLP  
 Corso Matteotti, 22  
 20121 Milan  
 Italy

**T:** +39 02 3046 2000  
**E:** [matteo.bay@lw.com](mailto:matteo.bay@lw.com)  
**E:** [antonio.distefano@lw.com](mailto:antonio.distefano@lw.com)  
**E:** [alessio.aresu@lw.com](mailto:alessio.aresu@lw.com)  
**E:** [fabrizio.santoni@lw.com](mailto:fabrizio.santoni@lw.com)  
**W:** [www.lw.com](http://www.lw.com)

**JAPAN**

Daisuke Oda and Aruto Kagami  
 Mori Hamada & Matsumoto  
 2-6-1 Marunouchi Park Building  
 Marunouchi  
 Chiyoda-ku  
 Tokyo 100-8222  
 Japan

**T:** +81 3 5223 7757  
**E:** [daisuke.oda@mhmjapan.com](mailto:daisuke.oda@mhmjapan.com)  
**E:** [aruto.kagami@mhmjapan.com](mailto:aruto.kagami@mhmjapan.com)  
**W:** [www.mhmjapan.com/en/](http://www.mhmjapan.com/en/)

**MEXICO**

Adrian Magallanes and Rodrigo Barradas  
 Muniz  
 Von Wobeser y Sierra, S.C.

**T:** +52 55 52581057  
**E:** [amagallanes@vwys.com.mx](mailto:amagallanes@vwys.com.mx)  
**E:** [rbarradas@vwys.com.mx](mailto:rbarradas@vwys.com.mx)  
**W:** [vonwobesersierra.com](http://vonwobesersierra.com)

## THE NETHERLANDS

Albert Knigge and Jan-Willem de Jong  
 Houthoff Buruma  
 Gustav Mahlerplein 50  
 1082 MA Amsterdam  
 The Netherlands

**T:** +31 020 605 60 00  
**F:** +31 020 605 67 00  
**E:** a.knigge@houthoff.com  
**E:** j.de.jong@houthoff.com  
**W:** www.houthoff.com

## NEW ZEALAND

Jenny Stevens and Sophie East  
 Bell Gully  
 Level 21  
 171 Featherston Street  
 Wellington 6140  
 New Zealand

**T:** +64 4 915 6800  
**F:** +64 4 915 6810  
**E:** jenny.stevens@bellgully.com  
**E:** sophie.east@bellgully.com  
**W:** www.bellgully.com

## PORTUGAL

João Pimentel and Ana Sofia Rendeiro  
 Campos Ferreira, Sá Carneiro & Associados  
 Av. da Liberdade, 249 8º  
 1250-143 Lisbon  
 Portugal

**T:** + 351 211 926 800  
**F:** + 351 211 926 899  
**E:** joao.pimentel@csassociados.pt  
**E:** sofia.rendeiro@csassociados.pt  
**W:** www.csassociados.pt

## RUSSIA

Irina Akimova and Dmitry Gavrilenko  
 Capital Legal Services  
 Moscow Office  
 7 Dolgorukovskaya Street  
 Sadovaya Plaza business center  
 127006 Moscow  
 Russia

**T:** + 7 495 970 1090  
**F:** +7 495 970 1091  
**E:** cls@cls.ru  
**W:** www.cls.ru

## SOUTH KOREA

Jin-Yeong Chung, Sungjean Seo and  
 Dong-Wook Kim  
 Kim & Chang  
 39, Sajik-ro 8-gil  
 Jongno-gu  
 Seoul 110-720  
 Korea

**T:** +82 2 3703 1114  
**F:** +82 2 737 9091/9092  
**E:** jychung@kimchang.com  
**E:** sjseo@kimchang.com  
**E:** dw.kim@kimchang.com  
**W:** www.kimchang.com

## SPAIN

Antonio Morales, Rosa Espín and  
 Jaime Zarzalejos  
 Latham & Watkins LLP  
 María de Molina 6, 4th Floor  
 Madrid 28006  
 Spain

**T:** +34 93 545 5000  
**E:** antonio.morales@lw.com  
**E:** rosa.espin@lw.com  
**E:** jaime.zarzalejos@lw.com  
**W:** www.lw.com

## SWEDEN

Krister Azelius and Maria Maaniidi  
 Advokatfirman Vinge KB  
 Kajpromenaden 21  
 Box 1064  
 SE-251 10 Helsingborg  
 Sweden

**T:** +46 10 614 30 00  
**F:** +46 10 614 31 90  
**E:** krister.azelius@vinge.se  
**E:** maria.maaniidi@vinge.se  
**E:** contact@vinge.se  
**W:** www.vinge.se

**UK: ENGLAND & WALES**

Jumana Rahman, Anna Hyde and  
Tanya Macrae  
Latham & Watkins LLP  
99 Bishopsgate  
London EC2M 3XF  
United Kingdom

---

**T: +44 20 7710 1000**  
**E: [jumana.rahman@lw.com](mailto:jumana.rahman@lw.com)**  
**E: [anna.hyde@lw.com](mailto:anna.hyde@lw.com)**  
**E: [tanya.macrae@lw.com](mailto:tanya.macrae@lw.com)**  
**W: [www.lw.com](http://www.lw.com)**

**UNITED STATES**

Margaret M Zwisler, Christopher S Yates,  
William R Sherman, William H Rawson and  
William J Rinner  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, D.C. 20004-1304  
United States

---

**T: +1 202 637 2200**  
**E: [margaret.zwisler@lw.com](mailto:margaret.zwisler@lw.com)**  
**E: [chris.yates@lw.com](mailto:chris.yates@lw.com)**  
**E: [william.sherman@lw.com](mailto:william.sherman@lw.com)**  
**E: [william.h.rawson@lw.com](mailto:william.h.rawson@lw.com)**  
**E: [william.rinner@lw.com](mailto:william.rinner@lw.com)**  
**W: [www.lw.com](http://www.lw.com)**