

The law – wherever you are in the world

This month ACQ Magazine asked four firms to discuss the law in their respective countries.



Dominik Gałkowski



Pallavi S Shroff



Tejas Karia

DETAILS

KKG

Kubas
Kos
Gaertner

Dominik Gałkowski
Kubas Kos Gaertner
Warsaw PL 00-609
al. Armii Ludowej 26
T: +48 22 321 83 00
F: +48 22 321 83 02
E: warszawa@kkg.pl



amarchand mangaldas
Amarchand & Mangaldas &
Suresh A. Shroff & Co.
Amarchand Towers
216, Okhla Industrial Estate,
Phase III
New Delhi- 110020, India
T: + 91 11 2692 0500
F: + 91 11 2692 4900
E: pallavi.shroff@amarchand.com

Class action in Poland

Last month a regulation constituting a breakthrough change in the provisions on civil proceedings was passed in Polish parliament. Mr Gałkowski, Partner from Polish law firm Kubas Kos Gaertner Adwokaci, told ACQ Magazine about the new regulation.

According to Mr Gałkowski, the act foresees the possibility, in certain cases, of the joint pursuit of claims in matters of claims of one type, based on the identical factual or legal basis. These can now be pursued by at least 10 people, provided the significant factual circumstances substantiating the demands are common for all the claims.

The act is based on the 'opt-in' system, meaning the proceedings cover only the claims of those people who agree to take part.

The pursuit of claims in a class action does not exclude the possibility of lodging a claim against the same defendant by those who do not agree to the action, despite the fact that their claims would be eligible.

In the event in which a substantial pecuniary claim is to be pursued in a class action, the class members must agree to a lump sum indication of their due compensation. They must also resign from the possibility of pursuing their own claim individually.

A class action in matters of pecuniary claims is only admissible in a case in which the amount of the claim for each class member is standardised with the consideration of the mutual circumstances of the case.

The regulation will also impede the pursuit of claims on lost benefits by the class members, which may be difficult to assess at the stage of submitting or acceding to the class action.

The new regulation does modify the substantive and legal bases pursued in the claim.

The act includes many interesting procedural problems, which will certainly become the subject of numerous judgments issued by the Polish courts.

This regulation has the chance of constituting a significant breakthrough, although it is difficult to assess, in the initial stages, how far it will change the share of Poland's legal landscape and that of other European states. Other countries in Europe are considering 'borrowing' this type of solution and they will be closely watching Poland's experience because of this.

Indian commercial arbitration

Pallavi S Shroff, a Senior Partner, and Tejas Karia, a Partner, both from Amarchand Mangaldas law firm in India spoke to ACQ about commercial arbitration their country. They said the settlement of disputes in India is often done for a particular reason and not many tribunals feature experts on the particular subject.

According to the pair, the majority of the commercial arbitration conducted in India is ad-hoc, being dealt with mostly former judges of high courts or the Supreme Court. Very few tribunals consist of experts on a particular subject matter in dispute. The international commercial arbitration involving one Indian party has venues outside India and is administered by institutional rules, due to considerable interference of Indian Courts in the arbitration process.

For the firm, it is essential to keep astride with international developments in order to advise both our domestic and foreign clients especially in view of India's recognised role in global economy and increasing number of international corporate and commercial transactions. International developments in arbitration are also relevant to ensure enforcement and recognition in jurisdictions around the world.

In terms of certain laws, the Model Law is designed to assist countries around the world to reform and modernise their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. The Indian Arbitration and Conciliation Act is primarily based on the UNCITRAL Model Law and has greatly influenced India's commercial arbitration. However, subsequent judicial interpretations of the act have resulted in significant divergence between the intention of the Model law and the act.

Amarchand & Mangaldas successfully advises Indian and multinational corporations in several institutional arbitrations such as ICC, LCIA, UNCITRAL, GAFM, FOSFA, SIAC and so on, as well as ad hoc arbitrations, both domestic and international. Its approach is client-attuned and problem solving and it has successfully represented high-profile clientele across the globe in prestigious international arbitrations. The firm's senior partners, Mrs Shroff and Ciccu Mukhopadhyaya, who is the Vice- President of ICC, have been recognised as two leading arbitration lawyers of India.

Swedish commercial litigation South African pharmaceuticals

Sverker Bonde is a Partner from Advokatfirman Delphi, an independent Swedish full service law firm with expert knowledge in all areas of commercial law. Mr Bonde told ACQ Magazine about the changes in commercial litigation and dispute resolution in Sweden.

Have there been any changes to commercial litigation law in Sweden over the years?

The Swedish Code of Judicial Procedure went through a major update and modernization with effect from November 2008. Leave of appeal is now the rule and not the exception already at appellate level whereas it previously was, in principle, only to the Supreme Court that leave of appeal was necessary. Further, all testimonies in court are now digitally recorded (both sound and film) and in principle no new oral testimony will be given at the appellate or Supreme Court level – only playbacks of previous testimony. The flexibility of the procedural rules is also increased to better facilitate the parties' needs in the individual dispute.

It is still too early to draw any firm conclusions on the effects of the update but so far it is the question as to whether leave of appeal should be granted by the appellate courts or not as it can be incoherent and therefore difficult to foresee. The Supreme Court has however in the recent period, issued a number of rulings which hopefully will resolve the uncertainty.

Commercial litigation is not the only area to experience changes recently - what have you seen?

Sweden has for a long time been known as a place for resolution of international arbitration disputes. Also for domestic Swedish disputes, arbitration is often the dispute resolution method of choice. Thus, arbitration has traditionally been, and remains, an important part of dispute resolution in Sweden. Recently mediation has gained an increasing interest. However, the number of cases where a formalized mediation process is followed is still fairly limited.

In the last few years the Swedish Courts have intensified their efforts to push parties to resolve ongoing disputes through settlement instead of letting the cases go to trial. Judges have increased their activity in the initial phase of the dispute and now push for a settlement more than previously. They are trained in techniques to better facilitate such settlements.

DM Kisch Inc is a firm of patent attorneys which has served a large number of researched based pharmaceutical companies with success for over 135 years of its existence. ACQ Magazine spoke to Nico Vermaak and Muhammed Vally, Patent Directors from DM Kisch Inc, about the pharmaceutical market in South Africa after the recession.

How has the pharmaceutical market been affected by the recession over the past 18 months?

Patent filing statistics are under-estimated indicators of innovators' performance and trust in their ability to compete in future markets. This is particularly applicable to the pharmaceutical industry. It was concerning that there was a 15% reduction in South African patent applications in 2009 relative to 2008. Statistics in respect of pharmaceutical patents are not readily available but it is unlikely to be any different. Discussions with multinational clients confirmed that the patent filing downturn is echoed at the commercial level. The worst affected seems to be the over-the-counter products, which reflects the fall in disposable income. There is a continued move towards generic medications which the South African legislation favours.

Do you feel consolidation is an appropriate method in order for the pharmaceutical and biotechnology industries to grow and remain strong?

Consolidations have been taking place for some years, and local companies are no less affected. Continuation is expected. Innovation in both business models and therapies shall be required to ensure sustainable growth.

What outlook do you have for the market?

According to our clients the South African market has fared better than some European markets which lead to a cautiously optimistic outlook which is heightened by the expectation of improvements in medicine registration procedure and infrastructure. With the World Cup behind us our health system is one of the identified priorities. Support for optimism may also be drawn from the patent filings in 2010 which are on par with 2009 filings at the half year mark. The leak seems to have been plugged.



Sverker Bonde



Nico Vermaak



Muhammed Vally

DETAILS

DELPHI

Advokatfirman Delphi
 Regeringsgatan 30-32
 P.O. Box 1432
 SE-111 84 Stockholm, Sweden
 T: +46 8 677 54 00
 W: www.delphi.se



DM KISCH INC

PATENT, TRADE MARK AND COPYRIGHT ATTORNEYS
 Johannesburg Office
 PO Box 781218, Sandton, 2146,
 South Africa
 T: +27 11 324-3000
 F: +27 11 884-8873
 E: MuhammedV@dmkisch.com
 W: www.dmkisch.com