

CIVIL LITIGATION

1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?

The official language used in the courts of Singapore is English. Court proceedings are therefore conducted in English.

However, where a party (other than counsel) or a witness is not proficient in the English language, he may elect to speak in another language which will be simultaneously translated into English by an official interpreter. Similarly, English spoken to that party or witness in Court will be simultaneously translated to him or her in the language in which he or she is proficient by the official interpreter.

Documents used for Court proceedings must be in the English language. Where documents are tendered to or produced in Court as evidence and they are not in the English language, they must be accompanied by an official English translation.

2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Applications may be made to Court, before the commencement of proceedings, for the discovery of documents or for interrogatories to be administered and answered.

Such pre-action discovery of documents or facts is intended to enable the prospective plaintiff to determine, before he starts proceedings, whether or not he has a good cause of action against the person from whom discovery is sought. In the case of interrogatories, it may also be for the purpose of enabling the prospective plaintiff to identify, in the first place, the likely or possible parties to the subsequent proceedings.

The Court will determine whether the person from whom discovery is sought is likely to be a party to the subsequent proceedings, and whether the facts or documents sought to be discovered are likely to be relevant to the cause or intended cause of action, or are relevant to an issue likely to arise out of the claim which is likely to be made in the subsequent proceedings.

The application will not be allowed if it is not necessary for disposing fairly of the cause or matter, or if the motive for the application is ulterior or is otherwise an abuse of the process of Court, or if it is merely a "fishing expedition" for information.

The application will also not be allowed if its purpose is to obtain evidence against a person not liable to suit.

Before making the application for pre-action discovery, the applicant should write to the person from whom discovery is sought, stating the applicant's case sufficiently to enable the intended respondent to take legal advice and act accordingly.

Otherwise, as a general practice, it is usual but not mandatory to issue a letter of demand before commencing legal proceedings.

3. What are the costs of civil and commercial proceedings? Who bears the costs?

Generally, costs of civil proceedings (which include commercial claims) are dependent on various factors, including the value of the claim, the number and complexity of the legal and factual issues involved, the number and complexity of interlocutory applications, the volume of documents, the number of witnesses, the number and seniority of counsel, the length and number of tranches of trial, the length and complexity of oral and written submissions, and whether there are appeals.

There are basically two kinds of costs, namely party-and-party costs and solicitor-and-client costs. The former are the costs payable by one party to the other party, and the latter are the costs payable by a party to its own lawyers. As a general rule, party-and-party costs are lower than solicitor-and-client costs.

Costs usually follow the event. This means that as a general rule, costs are payable by the unsuccessful party to the successful party. Such costs are usually party-and-party costs, unless otherwise ordered by the Court due to special circumstances in the case.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The following documents are discoverable in civil proceedings (which include commercial claims):

- (a) Documents on which a party relies or will rely;
- (b) Documents which could adversely affect a party's own case, or adversely affect another party's case, or support another party's case; and
- (c) Documents which may lead a party to a train of inquiry resulting in information which may adversely affect a party's own case, or adversely affect another party's case, or support another party's case.

In any event, documents are discoverable if they are relevant to the cause of action or an issue in action.

Electronic discovery of documents is not unusual.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

The usual process is for a witness to make an affidavit setting out his evidence-in-chief. The Affidavits of Evidence-in-Chief of a party's witnesses are exchanged with those of the other party's witnesses in advance of the trial. A witness is then cross-examined on his affidavit evidence at the trial.

A witness can be compelled by subpoena to attend court to give evidence.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

Settlement discussions may be conducted orally or in writing, and may be between the parties directly or through counsel.

Such discussions, whether oral or in writing, are privileged if they are conducted on a "without-prejudice" basis.

7. How can foreign judgments be enforced?

Generally, to “enforce” a foreign judgment, the party in whose favor the judgment had been made must commence a fresh action in the Singapore Court. He may, however, rely on the doctrine of comity between nations to ask the Court to grant judgment on the basis of a final judgment made by a court of competent jurisdiction in a foreign nation.

Both ad hoc and institutional arbitrations are common in Singapore. The use of one or the other depends on the arbitration agreement between the parties.

5. Which arbitration institutes are most popular?

The Singapore International Arbitration Centre and the Singapore Institute of Arbitrators are “popular” arbitration institutes in Singapore.

6. What influence can the parties have on the identity of the arbitrator(s)?

The appointment of the arbitrator is by mutual agreement between the parties. Where the parties do not agree on the arbitrator to be appointed, the appointment of the arbitrator is governed by the arbitration rules agreed upon by the parties. Where no arbitration rules have been agreed, either party may apply to the Chairman of the Singapore International Arbitration Centre to appoint the arbitrator.

7. In what language is an arbitration proceedings conducted?

Arbitration proceedings are conducted in the language agreed upon in the arbitration agreement, or as provided in the rules of arbitration in accordance with which the arbitration is conducted.

8. What types of pre-arbitration measures are available and what are their limitations?

The pre-action discovery available for court proceedings is generally not available for arbitrations.

9. What are the costs of arbitration proceedings and who bears these costs?

Costs of arbitration proceedings are similar to costs of civil proceedings in Court, which are discussed above. In addition, however, costs of arbitration proceedings will include the arbitral tribunal’s fees and expenses, the costs of the

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

Mediation clauses in commercial contracts are binding and enforceable.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

The procedure for mediation is determined by the mediator appointed by the parties.

3. Are arbitration clauses in commercial contracts binding and enforceable?

Arbitration clauses in commercial contracts are binding and enforceable.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

facilities required for the hearing of evidence and, in the case of an institutional arbitration, the fees and expenses of the arbitration institution.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

Discovery in arbitration is normally limited to such documents as may be of relevance to the issues in dispute.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

The procedure for witness evidence is usually determined by the arbitration rules governing the arbitration, or by the arbitral tribunal.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

Settlement discussions may be conducted orally or in writing, and may be between the parties directly or through their representatives.

Such discussions, whether oral or in writing, are privileged if they are conducted on a “without-prejudice” basis.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

Where the arbitration is a “domestic” arbitration under the Arbitration Act (Chapter 10), the arbitral award may be appealed against on a question of Singapore law, arising out of a finding of law in dispute between the parties. Where the arbitral tribunal failed to correctly

apply the law, this would merely be an “error of law” which is not reviewable on appeal.

An arbitral award made in a “domestic” arbitration as aforesaid may also be set aside on the following grounds:

- (a) A party to the arbitration agreement was under some incapacity;
- (b) The arbitration agreement is not valid under the law to which the parties have subjected it or under the law of Singapore;
- (c) The party making the application to set aside the award was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- (d) The award (or the relevant part) deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission;
- (e) The composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties;
- (f) The making of the award was induced or affected by fraud or corruption;
- (g) There was a breach of the rules of natural justice in connection with the making of the award by which the rights of any party have been prejudiced;
- (h) The subject matter of the dispute is not capable of settlement by arbitration; or

- (i) The award is contrary to public policy.

rights of any party have been prejudiced;

Where the arbitration is an international arbitration under the International Arbitration Act (Chapter 143A), the only recourse against an arbitral award is to apply to set it aside (i.e. there is no appeal process).

- (h) The subject matter of the dispute is not capable of settlement by arbitration; or

- (i) The award is contrary to public policy.

Such an award (which must have been made in Singapore) may be set aside on the following grounds:

- (a) A party to the arbitration agreement was under some incapacity;
- (b) The arbitration agreement is not valid under the law to which the parties have subjected it or under the law of Singapore;
- (c) The party making the application to set aside the award was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- (d) The award (or the relevant part) deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission;
- (e) The composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties;
- (f) The making of the award was induced or affected by fraud or corruption;
- (g) There was a breach of the rules of natural justice in connection with the making of the award by which the