

A Guide to Litigation in Singapore

This Guide aims to provide an overview of key practical issues frequently encountered by users of court litigation in Singapore.

The Singapore Court Structure

1. What is the Court Structure like in Singapore and are certain disputes allocated to different Courts?

The Singapore court system comprises the Supreme Court (which includes the Court of Appeal and the High Court) and the State Courts.

The Singapore High Court generally hears cases where the claimed amount exceeds S\$250,000. The Singapore International Commercial Court (“**SICC**”) is a division of the High Court which deals with disputes in circumstances where (i) the claim is of an international and commercial nature; (ii) the parties have submitted to the SICC’s jurisdiction and (iii) the parties do not seek relief in the form of a prerogative order. With the consent of parties or pursuant to a court order, a case may be transferred from the High Court to the SICC.

The State Courts comprise the Family Justice Courts, the District Court and the Magistrates’ Court. The Magistrates’ Court hears disputes where the claimed amount does not exceed S\$60,000 while the District Court hears disputes where the claimed amount falls between S\$60,000 and S\$250,000.

Considerations before the Commencement of Litigation Proceedings

2. Are there any limitation periods a litigant should be aware of before commencing legal proceedings?

Pursuant to Section 6 of the Limitation Act, the limitation period for contractual and tortious claims as well as the enforcement of judgments and arbitral awards is six years from the date on which the cause of action accrued (although, in the case of tortious claims, this limit can be extended where latent damage becomes apparent after the expiry of the 6 year limit).

For personal injury claims, the limitation period is three years from the date on which the cause of action accrued or the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury.

The Limitation Act prescribes a host of other rules and time limits covering various scenarios and potential litigants are advised to seek legal advice.

3. Who can appear and conduct cases before the Singapore Courts?

Individuals may represent themselves in litigation proceedings before the Singapore Courts. Unless the court has granted leave for an authorised representative to act on its behalf, corporate entities are required to be represented by a lawyer.

Only lawyers that are called to the Singapore Bar with valid practising certificates may represent clients in the Singapore Court.

Foreign lawyers cannot represent clients in the Singapore Courts unless exceptions have been granted by the court under very limited circumstances: (i) the foreign lawyer is a Queen's Counsel or a lawyer of equivalent standing and has obtained permission to represent a party in court pursuant to Section 15 of the Legal Profession Act; and (ii) the foreign lawyer has obtained full registration to appear in proceedings before the SICC and subsequent appeals from the SICC to the Court of Appeal pursuant to Section 4 of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.

4. Is Third Party Funding permissible in Singapore?

Third party funding is allowed for international arbitration and related court or mediation proceedings. Lawyers whose clients have obtained third party funding are required to disclose the existence of any funding arrangement and the identity of the funder to all parties to the proceedings including the tribunal and/or the court.

Third party funding for litigation is generally not permitted in Singapore. However, the courts have allowed limited third party funding where there is a legitimate interest by the third party funder in the litigation.

It remains to be seen whether the third party framework will be extended to domestic arbitration proceedings and certain prescribed proceedings in the SICC.

5. Are Court proceedings confidential?

With the exception of interlocutory proceedings which are heard in chambers, court proceedings are generally public. The public may view documents filed in court proceedings by filing a request to inspect the document. Depending on the nature of the case (e.g. arbitration related court proceedings or proceedings involving vulnerable victims or witnesses), the court may, on the application of a party, allow the case to be heard in camera (in other words, not in public), impose a gag order or order the sealing of the court file.

The Court Process

6. What are the main stages of litigation?

Commencement of Proceedings: Civil Proceedings can be commenced by way of Writ of Summons (for actions that are likely to include a substantial dispute of facts) or Originating Summons (actions that are unlikely to include a substantial dispute or fact or where the principal question is a question of law). A Writ of Summons is the usual mode of commencing proceedings.

Service of Originating Process: The originating process has to be personally served on each defendant within six months of the summons being issued, unless the defendant is served outside of Singapore in which case the summons is valid for twelve months. If the defendant is outside of Singapore, the plaintiff must obtain an order from the court in order to serve the originating process outside the jurisdiction.

Terminology for the parties: the party bringing the action and making the claim is called the "plaintiff". The party defending the plaintiff's claim is the "defendant". Where the defendant also makes a claim against the plaintiff (known as a "counterclaim"), the defendant will be known as the "plaintiff in the counterclaim", in respect of that counterclaim, and the plaintiff will be known as the "defendant in the counterclaim".

Entering of Appearance: Within 8 days from the date of service of the originating process (or 21 days if the defendant is outside of Singapore), the defendant must enter an appearance failing which judgment in default of appearance may be entered.

Pleadings: Pleadings are the documents in which each party to the litigation sets out their case. In Singapore they usually comprise: (i) a Statement of Claim (from the plaintiff); (ii) a Defence (and where relevant, counterclaim) (from the defendant); and (iii) a Reply (and where relevant, defence to counterclaim) (from the plaintiff).

The Statement of Claim filed by the plaintiff sets out the material facts and causes of action on which the plaintiff relies to establish its claim against the defendant.

Within 14 days after the time limit for entering an appearance or after service of the Statement of Claim (whichever is later), the defendant must enter a Defence responding to the allegations raised in the Statement of Claim. The defendant may also file a counterclaim against the plaintiff together with its defence. If no defence is filed by the defendant within the prescribed period, the plaintiff may enter judgment against the defendant.

Within 14 days after the filing of the defence (or defence and counterclaim), the plaintiff may file a reply or reply and defence to counterclaim. If the plaintiff files a defence to counterclaim, the defendant may file a reply to the defence to counterclaim. Pleadings will be deemed to be closed 14 days thereafter.

Discovery: Parties must disclose all relevant and non-privileged documents in their possession, custody and power. All parties in litigation are under a duty to preserve all relevant documents to the case. In general terms, a document is relevant if it supports or undermines a party's case.

Where a party believes that the other party has not disclosed all relevant and non-privileged documents, that party can apply to the court for an order that such documents be disclosed. This is known as "specific discovery". An application for specific discovery can request disclosure of specific documents or classes of document which are relevant to the case. Such an application can also ask for documents or classes of document that may reveal the whereabouts of documents which are relevant to the case.

Exchange of Affidavits: Following discovery, directions are usually given by the court for parties' factual witnesses to provide evidence in writing by way of affirmed witness statements in the form of an affidavit of evidence in chief ("AEIC"). The evidence of experts is given in a signed written report and exhibited in an affidavit affirmed by the expert.

Trial: At trial, unless the court otherwise orders or parties agree to waive the attendance of the witness, the witness is required to attend trial to be cross examined by opposing counsel. Having considered the evidence and the submissions made by parties, the judge will determine the dispute by issuing a judgment.

7. Are there any provisions available for a case to be won or to be dismissed before a full trial?

Yes. The four most common provisions are as follows.

Default Judgment: In circumstances where the defendant fails to enter an appearance or file its defence within the prescribed timeframe, a plaintiff may apply to court to enter judgment in default.

Summary Judgment: In circumstances where the defendant files a defence and there appears to be no real defence to the claim and no triable issues, a plaintiff may file a summary judgment application to invite the court to order summary judgment against the defendant

Striking Out: A party may file an application to strike out part or all of a pleading (including a Statement of Claim or a Defence) if (i) it discloses no reasonable cause of action or defence; (ii) it is scandalous, frivolous or vexatious in nature; (iii) it prejudices, embarrasses or delays the fair trial of the action; or (iv) is otherwise an abuse of the process of the court. In some cases the striking out can result in one side immediately succeeding.

Failure to comply with the Rules of Court: the Rules of Court provide in certain instances that a party's case may be struck out where it fails to comply with certain rules. One example is where a party fails to meet its discovery obligations.

8. What are some interim remedies available?

Security for Costs: Security for costs is a remedy to ensure that defendants who succeed in their defence of a claim, can recover their costs from plaintiffs who may be overseas or who may not have the means to repay the defendant's costs. A defendant may make an application for the plaintiff to provide security for costs on grounds that (i) the plaintiff is ordinarily outside of jurisdiction; (ii) the plaintiff is a nominal plaintiff suing for the benefit of some other person and there is reason to believe that it will be unable to pay the costs of the defendant if ordered to do so; (iii) the plaintiff's address is not stated or is wrongly stated in the originating process; and (iv) the plaintiff has changed its address during the course of the proceedings and there is reason to believe that it is evading the consequences of litigation. In determining the application, the court will consider whether it is just and fair in the circumstances to order the plaintiff to provide security for costs and the extent of such security.

Further and Better Particulars: The general rule is that each party to litigation should be told clearly of the case against it and to achieve this, the pleadings must contain sufficient information about the other party's case. A party that is of the view that the pleadings served on him by the opposing party contain insufficient information or are unclear may after making a request, file an application seeking further and better particulars of the opposing party's pleadings.

Specific Discovery: As discussed above, a party that is of the view that the opposing party has failed to provide all relevant documents or specific documents in its possession, custody or power may after making a request, file an application for specific discovery to compel the other party to produce those documents. The court may grant an order for specific discovery if it deems that the discovery of sought documents is just, relevant and necessary for the fair disposal of the action or for saving costs.

Interim Injunction: An interim injunction may be sought where there is a requirement for the defendant (in most cases) to be restrained from doing something, or compelled to do something before the dispute is conclusively determined to prevent the plaintiff from

suffering irreparable damages and loss or to preserve the evidence or property that are necessary for the fair and just determination of the litigation.

To succeed on most interim injunction applications, as a general rule the court must be satisfied that there are serious questions to be tried and that the balance of convenience lies in favour of granting the interim injunction. The applicant is required to prove that its losses would not be adequately compensated by monetary damages if the injunction is not granted and this will be weighed against the inconvenience caused to the other party (usually a defendant) if the injunction is granted. In granting the injunction, the applicant may be required to provide an undertaking that it will compensate the other party for any loss the court might later find that the order for injunctive relief resulted in.

Interim injunctions can be applied for on an inter-parties (meaning where the party to be subject to the injunction is informed in advance) or on an ex-parte (meaning where the application is made without informing the other party). Where an interim injunction is ordered on an ex parte basis, the party subject to the injunction may apply to the court at any time to vary or discharge the order on the basis that (i) there is no urgency to justify an ex parte application; (ii) the injunction is an abuse of process; (iii) there was a delay in the time that the injunction was sought; and (iv) the applicant for the injunction failed to make full and frank disclosure of all material facts.

9. Are there any remedies available to preserve the dissipation of assets?

A Mareva Injunction (referred to in some jurisdictions as a “freezing injunction”) restraining a defendant from moving assets out of jurisdiction or disposing assets to evade the satisfaction of a potential judgment can be taken out by a plaintiff who has a claim for substantial relief in the proceedings. While the court has ultimate discretion on whether to grant the Mareva Injunction, the court must be satisfied that (i) there is a valid cause of action within the court’s jurisdiction; (ii) the plaintiff possesses a good arguable case; (iii) the defendant has assets within the jurisdiction; and (iv) there is a real risk that the defendant, if not restrained, will dissipate those assets ahead of judgment.

Disclosure and Privilege

10. What documents must a party disclose in litigation proceedings?

The Rules of Court requires each party to disclose to the other a list of documents in its possession, custody or power that (i) it relies on or will rely; and (ii) documents which could adversely affect its own case, adversely affect another party’s case or support another party’s case.

Parties are required to exchange their list of documents and inspect the documents according to the timelines fixed by the court. Failure to comply with the direction of the

court may result in peremptory orders issued by the court against the defaulting party and potentially for the defaulting party's case to be struck out.

11. What documents are considered privileged?

Privilege is a legal concept similar to confidentiality. If a document is privileged it cannot be disclosed to the court or the other parties in the litigation. There are exceptions to this, particularly if the document has already been disclosed to another party, in which case privilege may have been waived.

Litigation Privilege: Broadly speaking, all documents and correspondence with third parties created for the dominant purpose of legal proceedings which are reasonably anticipated or existing are protected by litigation privilege.

Legal Advice Privilege: Broadly speaking, legal advice privilege attaches to confidential communication between a lawyer and his/her client for the purpose of seeking legal advice, whether or not litigation is contemplated.

12. Are documents marked without prejudice protected from disclosure in court?

It depends. The effect of the without prejudice rule is that communications made in a genuine attempt to settle a dispute are prevented from being disclosed in court. A document that is not marked without prejudice will not necessarily result in a loss of privilege if the communication objectively is genuinely aimed at settlement. By the same token, a document marked without prejudice may not afford protection if the communication does not form part of a genuine attempt to settle a dispute.

Appeals

13. What avenues of appeal are available for proceedings commenced in the High Court?

Appeals against Interlocutory Orders: A party dissatisfied with the decision of a registrar in chambers may file an appeal to be heard before a High Court judge in chambers within 14 days of that decision. No leave of court is required.

A party dissatisfied with a decision of a High Court judge in chambers may file a request for further arguments either before the order of court is extracted or within 14 days of the delivery of that decision, whichever is earlier.

If the judge decides that he or she wishes to hear further arguments, the party who filed the request will be informed within 14 days of the request that the judge requires further arguments.

Upon hearing further arguments, the judge may affirm, vary or set aside the decision. If the party remains dissatisfied with the decision of the judge, he may file an appeal to the Court of Appeal subject to the satisfaction of the provisions of the Supreme Court of Judicature Act (“SCJA”).

Appeals from the High Court to the Court of Appeal: Subject to the provisions of the SCJA, a party dissatisfied with the decision of the High Court in a civil matter may appeal to the Court of Appeal. A notice of appeal must be filed within 1 month from the date of the judgment appealed against. The appellant has to provide security for the respondent’s cost of the appeal.

14. What avenues of appeal are available for proceedings commenced in the State Courts?

A party dissatisfied with the decision or order made by a district judge in a civil action in the State Courts may file an appeal to the High Court within 14 days of the decision or order. The appellant may be required to provide security of the respondent’s cost of the appeal.

Costs

15. To what extent does an unsuccessful party have to pay the successful party legal costs?

Generally, the courts order the unsuccessful party to pay a portion of the successful party’s legal costs and disbursements. All awards on costs are entirely at the discretion of the court. For instance, the court may award nominal or no costs to a successful party depending if the court is of the view that the successful party conducted the case poorly and in bad faith.

It is important to note that successful parties in Singapore litigation that is complex and costly (in terms of legal fees) rarely recover all of their actual costs.

16. To what extent do calderbank offers or offers to settle impact the court’s award on costs?

The Rules of Court provide for a settlement offers that comply with those rules to be recognised at the costs stage of any proceedings. In common with other jurisdictions and arbitration, successful parties who make settlement offers will benefit in terms of costs, as follows.

In circumstances where a plaintiff makes an offer to settle and subsequently obtains a result that is equivalent to or more better than the offer, the defendant may be ordered to pay the plaintiff’s costs on an indemnity basis from the date of its offer to settle to the

date of the judgment and costs on a standard basis from the commencement of legal proceedings up to the date of the offer.

By the same token, in circumstances where a defendant makes an offer to settle and subsequently obtains a result that is equivalent or better than the offer, notwithstanding that the plaintiff ultimately succeeded in its claim against the defendant, the court is likely to order the defendant to pay the plaintiff costs on a standard basis from the commencement of proceedings up to the date of the offer and the plaintiff to pay the defendant costs on an indemnity basis from the date of the offer until the date of judgment.

Costs on a standard basis, broadly speaking, means that the costs that can be recovered will be calculated in accordance with the relevant guidelines published by the court. These guidelines provide a framework within which costs should be calculated and apply cost ranges depending on factors such as the nature claim, the complexity of the claim and the number of days required for the trial of the evidence (among other things).

Indemnity costs, broadly speaking, means that the successful party is entitled to recover costs that more closely reflect its true costs of the litigation (as opposed to the standard basis). However, in practice this rarely results in costs being awarded on a true indemnity basis. As a rule of thumb, indemnity costs will typically be 30% higher than the standard costs awarded.

To comply with the Rules of Court, offers to settle must comply with the requirements of those rules. One requirement is that any offer to settle must remain open for acceptance until the conclusion of the action.

Offers to settle that do not comply with the Rules of Court (such as Calderbank offers) can still be considered by the court, but this will be at the court's discretion.

Enforcement

17. What procedures are available to enforcement a judgment against a defendant in Singapore?

Writ of Seizure and Sale (WSS): With the WSS, the judgment creditor requests the court to seize the property of the judgment debtor in order to pay the judgment debt. The court appointed bailiff will access the premises of the judgment debtor to seize his property which will be sold at a public auction.

Subsequent to the judgment creditor obtaining the WSS, the judgment debtor may apply for a stay of execution on the basis of special circumstances. An example of such a circumstance would be that the judgment debtor intends to make an appeal or inability to pay.

Garnishee Proceedings: In circumstances where a third-party owes money to the judgment debtor, garnishee proceedings can be taken out to compel the garnishee to pay money to the judgment creditor instead of the judgment debtor.

To commence this process the judgment creditor should apply for a provisional garnishee order. The provisional garnishee order is to be personally served on both the garnishee and the judgment debtor. This would be followed by show cause proceedings where the third party – the garnishee – confirms that there is money owed to the judgment debtor. The court will then make a final garnishee order ordering the garnishee to make the payment to the judgment creditor. For a provisional garnishee order to not be made final, a garnishee must be able to demonstrate that there is reasonable ground to the contrary.

The garnishee may be held to be in contempt of court if he fails to comply with the garnishee order by, for example, disposing of the money attached by the court.

Examination of Judgment Debtor: This application is taken out to examine the judgment debtor in order to determine what his assets are.

If the court grants the judgment creditor leave for an examination of the judgment debtor, the court will order that the judgment debtor appears before a court registrar and be orally examined. Such an examination would be based on whatever property the judgment debtor has wheresoever it is situated. The court may also require the judgment debtor to present any books or documents he has that are relevant for purposes of the examination.

The information obtained from the examination is subsequently made available to the judgment creditor who can then decide how best to enforce the judgment debt.

Winding Up Application: If the judgment debtor is a corporate entity, the judgment creditor may institute winding up proceedings against the judgment debtor.

The process of winding up – or liquidation – entails the seizing of a company's assets and converting them into cash. It is the proceeds from the seized assets that are then used to clear the company's debts and liabilities. The order of payment is as follows, subject to the amount of funds available for distribution.

- Secured creditors (with fixed charges)
- Preferential creditors under the Companies Act
- Secured creditors (with floating charges)
- Unsecured creditors
- Members of the company

18. What procedures are available to enforce a foreign judgment against a defendant in Singapore?

The Reciprocal Enforcement of Commonwealth Judgments Act (“**RECJA**”), the Reciprocal Enforcement of Foreign Judgments Act (“**REFJA**”) and the Choice of Court Agreement Act (“**CCA**”) are three statutory regimes relating to the enforcement of foreign judgments in Singapore.

Under the RECJA, judgments from certain courts of various countries including the UK, Australia, Hong Kong (before 1997), New Zealand, Malaysia, Sri Lanka, Brunei, Pakistan and certain states of India may be registered in the High Court via an ex parte application. Following registration, the judgments can be enforced as judgments of the Singapore High Court.

The REFJA operates in the same manner as the RECJA and applies only to judgments from the Hong Kong SAR High Court and the Court of Final Appeal.

The CCA allows a party to apply to the High Court to recognise and enforce a foreign judgment obtained from a court of a state that is a party to the Hague Choice of Court Convention. This allows court judgments of signatory states to be directly enforced in Singapore.