

PANORAMIC

DISPUTE RESOLUTION 2025

Contributing Editors

Jonathan Speed and Louise Lanzkron

Bird & Bird



LEXOLOGY

Dispute Resolution 2025

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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Nikita Gorjaev, Saoirse Rock, Klaus Oblin

OBLIN Attorneys at Law

Canada - Ontario

L Leslie Dizgun, Ciarán McGrath, Payam Ezzatian

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George Z Georgiou & Associates LLC

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OBLIN Attorneys at Law

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Donald Manasse Law Offices

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Singapore

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Switzerland

Cyrill Süess, Bilel Amri

Valfor Attorneys-at-law

Taiwan

Selena Chen, Jeffrey Li

Lee and Li Attorneys at Law

Thailand

Pisut Rakwong, Supachoke Pongdasakorngamjai

Pisut & Partners

Ukraine

Andrii Chornous, Iryna Nahorniak

Hillmont Partners

United Arab Emirates

Stuart Paterson, Jason Han, Tania Forichom, Sam Hunt, Wajih Jaroudi

Herbert Smith Freehills Kramer LLP

United Kingdom - England & Wales

Jonathan Speed, Louise Lanzkron

Bird & Bird

Vietnam

Ha Thi Thu Duong, Nguyen Thi Hai Chi, Pham Duy Nghia, Nguyen Vuong Minh Ngoc

CDR Counsels

Dispute Resolution: Introduction

[Jonathan Speed](#) and [Louise Lanzkron](#)

[Bird & Bird](#)

In 2025, we see several themes emerging that will impact the resolution of disputes in every jurisdiction over the next decade and beyond. This will affect the nature and scope of the types of disputes we are seeing and the methods we will use to resolve them.

Technological innovation such as AI is creating new sources of liability and risk. Legislators are trying to keep pace while the courts are dealing with the issues created, most notably in the area of copyright infringement in the outputs of AI-generated content. We continue to see disputes in other areas of new technology. For example, disputes relating to smart contracts, crypto currency and intellectual property rights in digital assets are issues that judges increasingly are familiar with and have to navigate. For example, granting urgent relief to identify a wrongdoer, granting a worldwide freezing order to ensure the wrongdoer does not dissipate their assets and serving proceedings on someone who is abroad or whose location is unknown in a cryptoasset fraud are just some of the issues the courts are now regularly having to deal with in this arena.

Technology may also offer new ways of accessing justice and resolving disputes, such as online dispute resolution, smart contracts, and algorithmic decision-making. The courts of England & Wales have formed an Online Procedural Rules Committee to make rules governing the practice and procedure for specific types of online court and tribunal proceedings across the Civil, Family and Tribunal jurisdictions. While on a more mundane level, claims in the English High Court are now all filed electronically via C E File.

Consumer litigation is on the rise as the pace of regulation increases. This is the result of legislative changes granting consumers rights to challenge corporates in ways that have been unavailable to them in the past. In the UK, under the Digital Markets, Competition and Consumers Act 2024, the Competition and Markets Authority has been granted direct powers for the first time to enforce breaches of consumer protection law by means of imposing fines and other penalties on businesses. Appeals from these decisions will be direct to the English High Court. Other legislative changes include mechanisms that allow consumers to bring mass claims in some jurisdictions for the first time. The EU has implemented Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, which has changed the legislative landscape in some EU states in this area. Likewise in the English courts, there is an increasing number of 'mass claims' or 'class actions' filed in the Competition Appeals Tribunal (CAT) and the first settlement of a collective action was approved by the CAT earlier this year.

The impact of ESG has given rise to cases involving human rights, climate change and consumer protection. The courts have become an increasingly important tool for holding entities accountable and responsible for their conduct, as well as for seeking compensation, injunctions and remedies for the victims and communities affected by their wrongdoing.

For example, class actions, public interest litigation and strategic litigation have been used to challenge and try to change the status quo with varying success. The English High Court is allowing claims by more than 13,000 farmers and fisherman from the Niger Delta against Shell for apparent violations to their right to a clean environment. Shell also faced a challenge by environmental charity ClientEarth, who, as a shareholder of Shell, tried to bring a derivative claim against it alleging breach of statutory duty by failing to implement satisfactory policies to comply with its obligations under the 2015 Paris Agreement. Although the claim was unsuccessful, it does point to an innovative approach by activist shareholders. Businesses are also at risk of greenwashing claims whether by consumers or regulators.

In addition, continuing geo-political conflicts combined with the effect of tariffs and modern slavery concerns are impacting the global supply chain like never before, leading to a rise in the number of disputes as companies are unable to fulfil contractual obligations. As cases become more complex jurisdictions want to ensure that parties choose their courts or arbitral institutions to resolve these disputes. Legislation is therefore amended, and international conventions joined to create a judicial environment that provides ease of enforcement of judgments and support to arbitral proceedings. In the UK, the recent updates to English arbitration law following the enactment of the Arbitration Act 2025 and the coming into force on 1 July 2025 of the 2019 Hague Judgments Convention are good examples of this. In a similar vein, in France, the Ministry of Justice has set up a review into possible reform of French arbitration law, while in Singapore, on 1 January 2025 the Singapore International Arbitration Centre (SIAC) 2025 rules entered into force.

Bird & Bird

[Jonathan Speed](#)
[Louise Lanzkron](#)

jonathan.speed@twobirds.com
louise.lanzkron@twobirds.com

[Bird & Bird](#)

[Read more from this firm on Lexology](#)

Australia

[Peter Lettieri](#), [Heather Richardson](#), [Jonathan Kenny](#)

[Kalus Kenny Intalex](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The civil court system in Australia includes federal and state jurisdictions. There are also specialist tribunals at both the state and federal level.

The federal jurisdiction includes the following courts.

- Federal Court, which has jurisdiction to hear almost all civil matters arising under Australian federal law. At first instance, most matters are heard by one judge. Appeals are heard by the Full Court of the Federal Court requiring three or more judges.
- Federal Circuit and Family Court, which hears disputes involving family law, migration law, administrative law, admiralty law, bankruptcy, consumer law, human rights, some industrial and employment matters, intellectual property and privacy law.

Australia's states and territories have inferior courts which have limited jurisdiction, expressed in statute. These are known as the magistrates' or local court and county or district court. The magistrates' or local court handles smaller matters. The county or district court, which is the intermediate court in the court hierarchy, has jurisdiction over most matters with a set monetary threshold.

The Supreme Court of Australia's states and territories is the highest court in that state or territory and hears the most complex civil cases and appeals from state courts and tribunals. Specialist lists are managed by judicial officers with experience in that area of law.

The civil jurisdiction of state and territory Supreme Courts is unlimited; however, usually smaller claims are heard by lower courts.

Appeals are heard by the Court of Appeal or the Full Court of a Supreme Court. Only the High Court can review decisions of the Court of Appeal or Full Court of a Supreme Court.

The High Court of Australia is the highest court and its decisions are binding on all lower courts. The High Court's original jurisdiction includes constitutional matters. It hears appeals from the appellate divisions of the Federal Court and the state and territory Supreme Courts. Leave to appeal to the High Court is required.

Specialist tribunals at state and federal level are established by legislation and hear specific disputes. For example, the Fair Work Commission is a national workplace relations tribunal which hears applications by employees in relation to employment and offers alternative dispute resolution forums for employees and employers. The Administrative Appeals Tribunal conducts reviews and hears appeals of administrative decisions made under Commonwealth laws, such as decisions made by government bodies and departments.

Most states also have a Civil and Administrative Tribunal to hear specific disputes, for example, relating to leases, domestic building and smaller consumer matters.

Law stated - 30 April 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Judges of Australian courts preside over court proceedings either alone, as part of a panel or with a jury. Judges are required to make independent assessments of the facts presented to them and interpret and apply statute and common law. In doing so, judges must act with impartiality to administer justice.

Judges do not play an inquisitorial role, rather solicitors and barristers as officers of the court, gather and present evidence to the judge to assist them in making findings of fact and law. Judges are independent from other arms of government.

Judges of Federal Courts are appointed by the Governor-General in Council. Judges of state courts are appointed by the Governor in Council for each particular state.

Law stated - 30 April 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods are governed by statute. Broadly speaking, each state and territory has a Limitation Act or Limitations of Actions Act.

The limitation period will depend on the nature of the claim. Limitation periods are vastly different. For example, a claim for personal injury, recovery of money secured by a mortgage, under a mortgage and a building action all have different limitation periods.

In Victoria, actions for breach of contract or for tort must not be brought after the expiration of six years from the date on which the cause of action accrued pursuant to [section 5- Limitation of Actions Act 1958 \(Vic\)](#). However, an exception to this is expressed in [section 134 of the Building Act 1993 \(Vic\)](#), which provides that a 'building action' cannot be brought more than 10 years after the date of issue of the certificate of final inspection.

Some claims to the Fair Work Commission must be brought within 21 days of termination of employment.

Practitioners should refer to relevant legislation when considering limitation periods.

Law stated - 30 April 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Parties to a dispute are required to take genuine or reasonable steps to resolve a dispute before issuing a proceeding. This may include the exchange of information, correspondence or documents or discussions between the parties.

Pursuant to [section 6 of the Civil Dispute Resolution Act 2011 \(Cth\)](#), an applicant to a proceeding in the Federal Court of Australia must file a genuine steps statement at the time of filing an application that sets out the steps taken to try to resolve the issues in dispute.

Further, legal practitioners are bound by the obligations set out in the relevant civil procedure rules of their state. For example, Victorian lawyers must observe the overarching obligations set out at Part 2.3 of the [Civil Procedure Act 2010\(Vic\)](#).

Law stated - 30 April 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Proceedings are commenced by filing an originating document, such as an originating motion, writ or application with the relevant court or tribunal. Before the claim can be issued and the originating document accepted, a filing fee must be paid to the court. Once filed, the claim documents are then served on the defendants, either personally or by post or sometimes email depending on the jurisdiction.

Following the covid-19 pandemic, the courts and tribunals at all levels have experienced a degree of backlog in hearing matters.

Courts and tribunals have permanently adopted some of the processes that were introduced to assist navigate the covid-19 restrictions such as electronic or virtual hearings and electronic filing systems, which also assist with the listing of disputes in a timely manner. Many courts now conduct short procedural hearings via video conference rather than in person to support efficiency.

However, some courts that deal with larger volumes of matters continue to be impacted by a heavy case load. For example, a lack of resourcing in the Victorian Civil and Administrative Tribunal (VCAT) caused lengthy delays with matters being listed for hearing.

Law stated - 30 April 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

The typical civil proceeding is likely to include the following steps:

- filing a claim and service of claim documents;



- filing of a defence and any counterclaim;
- a directions hearing to set a timetable for the proceeding;
- mediation or conciliation;
- discovery, or an exchange of relevant documents;
- the filing of witness statements; and
- trial.

The time frame for a civil claim will vary depending on the jurisdiction and the complexity of the claim, the volume of documents, number of witnesses and complexity of evidence.

Law stated - 30 April 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

A defendant can, in an appropriate case, challenge the court's jurisdiction to hear the proceeding. It may be the case that the matter should be heard by a different court or tribunal within the same state, the courts of a different state, or transferred between the Federal and state jurisdiction.

Jurisdiction of an Australian Court may be challenged on the following grounds:

- the service of the originating process was not in accordance with the court's rules;
- the Court may be an inappropriate forum for the trial of the proceeding; and
- the plaintiff's prospects of success are insufficient to warrant putting the defendant to the time, expense and trouble of defending the claim.

In all Australian jurisdictions except New South Wales, a conditional appearance may be entered by a defendant to challenge the court's jurisdiction. In New South Wales, a party may make an application to the court by way of a Notice of Motion to challenge the Court's jurisdiction and have the process set aside.

Parties may apply for anti-suit orders in the form of an anti-suit injunction. An anti-suit injunction is a court order to restrain someone (subject to the jurisdiction of that court) from commencing or continuing proceedings in a foreign court.

An anti-suit injunction operates *in personam* and has two bases for being granted:

- to protect the integrity of the court's own processes; and
- if there is no benefit in bringing the foreign proceeding as it amounts to the unconscionable exercise of a legal right, a breach of a legal or equitable right, or where the foreign proceedings are vexatious or oppressive.

Law stated - 30 April 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

In Australia, parties exercise some control over the procedure and timetable of their case. However, that control is limited by the rules and practice notes governing each court or tribunal.

Australian courts exercise ultimate authority to set deadlines and make procedural rulings. If parties believe that they will be unable to meet the set deadlines, they may seek permission from the court for an extension of time. Typically, the party seeking an extension must provide an acceptable explanation of the delay and why it is fair and equitable in the circumstances.

In deciding whether or not to grant the extension of time, the court will consider whether any action has been taken by the party seeking an extension of time and whether extending time would cause any prejudice to the other party in the proceeding.

The parties and their lawyers have a statutory duty to work with the court, and among themselves, to facilitate the just and efficient resolution of disputes.

This cooperation requires disputing parties (and their lawyers) to consider the best way of managing their case, including alternative dispute resolution (eg, mediation). The core objective of the court, and the parties, is to reduce costs and delay.

Civil procedure rules enable courts to manage litigation. A failure to comply with court orders may result in sanctions against a party.

Law stated - 30 April 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In Victoria, the destruction of documents which are likely to be required in evidence in a legal proceeding is an indictable offence under [section 254 Crimes Act 1958\(Vic\)](#).

Further, under both Australian common law and statute, parties must preserve documents and other evidence, including those unhelpful to their case, in order to comply with their discovery obligations, namely the process of compulsory disclosure.

Through the process of discovery, parties are required to disclose documents which support their position and which are prejudicial to their case or support the case of another party.

The obligation to discover documents in a proceeding is ongoing and accordingly if documents come into a party's possession after discovery has been made, there is an obligation to make supplementary discovery.

Law stated - 30 April 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Under both common law and statute, confidential communications passing between a client and lawyer attract legal professional privilege if:

- documents were produced for the dominant purpose of providing legal advice; or
- the dominant purpose is to provide legal advice relating to actual, anticipated or pending legal proceedings.

At common law, legal professional privilege extends to documents that a lawyer has created, but not yet communicated or provided to the client.

Legal professional privilege may apply to communications or documents involving in-house legal counsel only insofar as they meet the dominant purpose test. However, a party claiming privilege over in-house counsel communications and documents must establish that the in-house counsel was:

- acting in a strictly legal capacity, and not in an operational or commercial capacity; and
- sufficiently independent from the organisation in order to be acting as an independent legal adviser.

If legal professional privilege applies, no disclosure obligations exist barring an express statutory exception, waiver or illegal purpose.

Law stated - 30 April 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

In most Australian courts and tribunals, parties exchange affidavits, statutory declarations or witness statements before trial. Usually, witnesses sign such documents under oath or affirmation.

Where a party seeks to rely on expert evidence, notice of the evidence must be provided to the court and other party prior to trial, usually in the form of a signed expert statement.

Law stated - 30 April 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

If a witness becomes hostile, a party may seek leave of the court to question them as though it were a cross-examination. In these circumstances, the hostile or unfavourable witness may only be questioned about matters arising from the prior cross-examination.

Law stated - 30 April 2025

Interim remedies

13 | What interim remedies are available?

Interim injunctions protect a party's rights via orders to maintain the status quo pending the outcome of a dispute before the court.

An interim injunction may be required, for example, to prevent the imminent publication of material or to prevent the demolition of a building.

Freezing orders prevent the disposal of funds or assets.

Search orders permit the search of a premises for evidence that may otherwise be destroyed.

Applications for freezing orders or search orders are usually ex parte.

Superior courts have jurisdiction to grant interim relief to support foreign proceedings in defined circumstances.

Law stated - 30 April 2025

Remedies

14 | What substantive remedies are available?

Damages are monetary judgments awarded to compensate a plaintiff for a loss suffered or to put them in a position they would have been in but for the wrong doing of a defendant.

Exemplary or 'punitive damages' are rare and only awarded when the defendant has engaged in conduct that shows a disregard for the other person's rights, or an intention to harm.

In a claim for debt or damages, interest can also be awarded pursuant to statute.

Costs are in the discretion of the court. Courts will usually make orders requiring the unsuccessful party to pay the costs of the successful party.

Law stated - 30 April 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The vast majority of civil disputes are settled by agreement between the parties involved. Mediation is often compulsory as the courts seek to encourage settlement between the parties. Mediations are held on a 'without prejudice' basis, meaning that neither party can disclose the content of the discussions or rely on the discussions at trial. If the parties can reach a mutual agreement to settle the dispute, there is no need for a court hearing.

If parties are able to reach this agreement, it should be put in writing and signed by both parties. Typically, this type of agreement will come in the form of a 'terms of settlement' or 'consent orders'.

Once finalised between the parties, the agreement is presented to the court who will formalise it if the agreement is considered appropriate.

Outside formal mediations, parties may make 'without prejudice' communications to seek to settle a matter. Such communications cannot be provided to a court so long as they contain a genuine attempt to settle the dispute. This protection encourages parties to make concessions and compromises without the fear of statements being used against them. The protections will not apply in situations where the communication:

- is used to hide any form of impropriety or illegal activity;
- is expressly stated that the communication is not confidential;
- lacks a genuine offer or attempt to resolve the dispute; or
- contains material already disclosed in open correspondence with the parties' consent.

A communication may be made 'without prejudice save as to costs', which attracts the same protections until the question of costs arises after the determination of the dispute by the court. The court may consider the communication for the purpose of formulating a costs order.

Law stated - 30 April 2025

Enforcement

16 | What means of enforcement are available?

There are a range of enforcement options, from judicial enquiry through to bankruptcy or liquidation of the debtor.

On application, a court may make orders for the examination of a debtor, or for a warrant to seize and sell a debtor's assets or property, or compel an employer or third party to divert payments otherwise due to the debtor, to pay off the debt.

If the judgment debt is A\$10,000 or more against an individual, or A\$4,000 or more against a company, the personal insolvency or corporate insolvency legislation can be used to bankrupt or wind up the debtor.

Law stated - 30 April 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

All court proceedings are open for the public to attend, with a few exceptions. A judge can decide to keep a case private in the interests of justice.

Most court filed documents can be publicly inspected and copied on payment of a fee. Some documents are confidential and may require a court order to allow inspection. This may occur, for example, in an *ex parte* application.

A judge may grant a suppression order to prohibit the publication of particular evidence or information to prevent prejudice to the administration of justice, for national or international security, or to protect a person's safety. Documents that are subject to a suppression order cannot be publicly accessed.

Law stated - 30 April 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Courts have broad powers to award costs at any time in a proceeding. Costs are generally awarded against an unsuccessful party. However, in some matters such as claims arising under the *Fair Work Act 2009* (Cth), the circumstances in which costs can be awarded are very narrow.

Costs are usually assessed by a taxing master or specialist costs court (or by an external costs assessor regime), and usually by reference to an itemised fixed scale of costs, that may differ from how a party is charged costs by their solicitor.

Recent developments amongst some Australian courts and specialist lists have sought to manage the costs of litigation by reducing the reliance on a fixed scale in favour of legal costing guidelines or by imposing the regular disclosure of a party's costs to the court.

When a defendant has reasonable concerns that a plaintiff may not have the means to meet an adverse costs order, the defendant can apply for security for costs, to protect their ability to recover costs.

Costs in civil claims operate differently in each Australian jurisdiction, with each state adopting different processes for determining how costs are calculated.

Law stated - 30 April 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No win, no fee', or 'conditional' cost agreements, involving the payment of an uplift fee are available and are commonly used by plaintiff firms to assist with financial hardship.

Contingency fee arrangements, where a lawyer is paid a percentage of the client's recovery are generally prohibited, with the exception of 'group costs orders' in Victorian class actions, by leave of the court.

The use of a third party or litigation funder is permitted, and the use of commercial funders is particularly prevalent in class actions.

Australian courts have criticised funding agreements when the commission is deemed to be excessive. A judge has the power to reduce the funder's commission to an amount they consider to be fair and reasonable.

Law stated - 30 April 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Legal Expenses Insurance (LEI) is a particular class of insurance that provides coverage for expenses that a party may incur throughout a legal dispute.

LEI will often cover a party's own legal costs, as well as providing coverage against any exposure to having to pay an opponent's legal costs following an adverse costs order.

Typically, corporations will also insure for professional indemnity, directors' and officers' liability and public liability. Such policies typically offer coverage for a party's legal costs.

Law stated - 30 April 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions or 'representative' or 'group' proceedings are now prominent within Australia as an essential method of facilitating access to Australia's civil justice system.

Class actions in Australia may be commenced in the Federal Court of Australia (under Part IVA of the Federal Court of Australia Act 1976 (Cth)) or in the State Supreme Courts, following state-based regulations.

The requirements for commencing a proceeding under the Federal and state regimes are substantially the same and include where:

- seven or more persons have claims against the same defendant(s);
- the claims are in respect of, or arise out of, the same, similar or related circumstances; and
- the claims give rise to at least one substantial common issue of law or fact.

In addition, under the relevant regimes:

- the proceeding should be brought by a class representative (or more than one, where there are differences between sub-groups of members) on behalf of all class members;
- there need be only one substantial common issue of fact or law between class members; and
- once a proceeding has been commenced, it will continue until finally resolved by judgment or settlement.

The filing of class actions have steadily increased largely due to the prevalence of third-party litigation funding.

Law stated - 30 April 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal can only be made if the original decision contains an error of law. This may include the incorrect application of a principle of law or a finding made that was not supported by the evidence.

The relevant court's legislation establishes the appeal procedure and whether an appeal can be made of right or whether leave of the court is required for an appeal.

Judgments may be appealed to a higher court, such as the appellate Courts of the Supreme Courts of each state, or the Full Court of the Federal Court of Australia, by any party to the proceeding.

The High Court of Australia is the final Court of appeal. Appeals to the High Court are permitted only by special leave that is granted in matters of public importance, interpretation of the Commonwealth Constitution, or instances of inconsistent application of the law across States and Territories.

Law stated - 30 April 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The [Foreign Judgments Act 1991\(Cth\)](#) and the [Foreign Judgments Regulations 1992 \(Cth\)](#) establish the scope and procedure for the enforcement of foreign judgments.

The [Agreement for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters 1994](#) permits the mutual recognition of civil and commercial judgments from the United Kingdom, provided they involve the payment of money.

The [Trans-Tasman Proceedings Act 2010\(Cth\)](#) facilitate the registration of New Zealand judgments in Australia.

Where a reciprocal agreement is not applicable, recognition and enforcement of foreign judgments within Australia is regulated by statute and common law.

Some foreign judgments may be enforced under common law principles.

Law stated - 30 April 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Australia is a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention).

A party to a civil matter may approach a court that is also a signatory to the Hague Evidence Convention and issue a letter of request for an Australian court to obtain oral or documentary evidence. This letter of request must comply with Australian rules for taking evidence. If successful, the Australian court will order the production of the requested evidence.

Law stated - 30 April 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Australia is a Model Law state. International arbitration is governed by the International Arbitration Act 1974 (Cth) (IAA) that gives the Model Law the force of law in Australia.

Domestic commercial arbitration is separately governed by uniform legislation enacted in all states and territories, that substantially reflects the Model Law, with some departures to accommodate the domestic context. The domestic uniform legislation follows the structure and character of the Model Law and is marked up with reference to the Model Law.

Both the IAA (section 16) and domestic legislation (section 2A) recognise the international nature of the Model Law and permit reference to UNCITRAL documents and working groups to aid in its interpretation.

Law stated - 30 April 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Following the Model Law, to be enforceable, an arbitration agreement must be in writing. However, a liberal approach is adopted, so long as the content is in written form. This may include electronic communications or the exchange of statements of claim and defence (where the agreement is not denied) and whether or not concluded orally or by conduct.

To be binding, an arbitration agreement must also contain a procedure that compels the parties to arbitrate, it is not enough that arbitration is a possibility.

Law stated - 30 April 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the agreement is silent, either one or three arbitrators are appointed.

For international arbitrations, three arbitrators are appointed, with each party appointing one arbitrator and the appointees then appoint a third.

Under section 10(2) of the domestic arbitration legislation, one arbitrator is appointed. If the parties cannot agree on an arbitrator, either party can apply to the court for the appointment.

For both international and domestic arbitrations, an arbitrator may only be challenged in limited circumstances, such as if there is reasonable doubt about an arbitrator's qualifications, impartiality or independence, and where a party is involved in the appointment, only if that circumstance is discovered after the appointment.

Law stated - 30 April 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

There are a number of arbitration institutions, such as Australian Centre for International Commercial Arbitration (ACICA), that organise and assist parties to select experienced arbitrators, including non-legal experts. Senior barristers and retired judges are also commonly engaged as highly experienced arbitrators.

ACICA is the only prescribed nominating authority for the appointment of arbitrators for international arbitrations.

Law stated - 30 April 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

Parties may agree on the procedure to be followed for arbitration, and although the domestic legislation provides for a process in default of agreement, it is generally subject to agreement. The domestic arbitration law extends the Model Law by imposing an obligation on parties to act in aid of proper conduct and with due expedition, and not to wilfully do or cause any delay or prevention of an award being made.

Parties to arbitration must be treated with equality and be given a reasonable opportunity to present their case.

Law stated - 30 April 2025

Court powers to support the arbitral process

- 30** | What powers do national courts have to support the arbitral process before and during an arbitration?

Under both the international and domestic arbitration laws, the Federal Court or the Supreme Court of a State or Territory may only provide support during an arbitration where the Model Law or domestic law permits. This can include support in a limited capacity in relation to the appointment of arbitrators, jurisdiction, capacity, enforcement of interim measures, the taking of evidence and matters concerning procedural fairness or natural justice.

These cannot be overruled by agreement between the parties.

Law stated - 30 April 2025

Interim relief

- 31** | Do arbitrators have powers to grant interim relief?

Both the Model Law and the domestic law grant the arbitral tribunal with a range of powers to order 'interim measures' to preserve the status quo, evidence, or assets from which an award may be satisfied, or to prevent harm or prejudice to the arbitration process.

The domestic law extends the Model Law by making specific reference to orders such as for security for costs, discovery and interrogatories, and the giving of evidence by affidavit.

Law stated - 30 April 2025

Award

32 | When and in what form must the award be delivered?

The award must be in writing and signed by the arbitrators and state the reasons on which the award is based, unless the parties have agreed no reasons are to be given. The award must also state its date and the place of arbitration. There are no time limits as to its delivery.

Law stated - 30 April 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Under the domestic law, the parties may by agreement appeal to the court on questions of law.

Otherwise, the grounds to set aside an award are limited to those provided in the Model Law, that includes grounds such as incapacity, invalidity of the arbitration agreement, exceedances of the terms of reference, failure to give notice or errors in the arbitral composition or process.

In addition, an award may be set aside if it is not capable of settlement by arbitration under the law of the State or if it conflicts with the public policy of the state.

Challenges to awards must be brought within three months. The court has discretion to enforce an award even if a ground to set it aside is established. The award may be partially set aside or remitted to the tribunal for reconsideration.

Law stated - 30 April 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The High Court has recognised the enforceability of international arbitration awards. See *Kingdom of Spain v Infrastructure Services Luxembourg S.a.r.l.* [2023] HCA 11.

A party seeking to enforce an international award can apply to the Federal Court of Australia or the Supreme Court of any Australian State or Territory. Domestic awards are enforceable by application to the Supreme Courts of any State or Territory, irrespective of where they are made.

On application, the courts must recognise and enforce an award, unless one of the limited grounds for refusal apply, including if the award is not capable of settlement by arbitration under the law of Australia, or if it conflicts with public policy.

Australia is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention. Being a party to the New York Convention means that the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration will be according to the terms of the Convention.

Law stated - 30 April 2025

Costs

35 | Can a successful party recover its costs?

The arbitral tribunal has broad discretion to award and assess the amount of costs a party may recover, and to whom and by whom costs are paid. It is not limited to any costs scales or rules used by any court that may assist with orders or the taxation of costs.

Law stated - 30 April 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Non-judicial alternative dispute resolution (ADR) processes are widely embraced in Australia and throughout its legal systems. The most common ADR processes used are mediations, conciliations, arbitration and expert referrals, and there has been recent uptake in some courts and specialist lists to encourage early neutral evaluation.

The most common sources of ADR are mediation and conciliation, on account of their widespread use as part of the compulsive processes of Australian courts and tribunals, to lessen the burden on state resources and on litigants to proceedings.

Law stated - 30 April 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Courts and tribunals throughout Australia recognise the value of ADR as an essential part of effective case management.

Usually, mediation or conciliation is required to be completed by the parties either as a precondition to the right to commence proceedings, or before litigants are permitted to proceed to a trial or hearing.

In proceedings in the Federal Court of Australia, for example, the parties must demonstrate to the court that they have taken genuine steps to resolve a dispute before commencing proceedings. A mediation or judicially-assisted conciliation is also usually ordered during the course of proceedings.

Law stated - 30 April 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Although Courts in Australia are based upon a traditional adversarial model, alternative (appropriate) dispute resolution (ADR) procedures are broadly embraced in much of the Australian legal system's rules and processes, to assist with the early resolution of disputes before judicial intervention becomes necessary.

Retired judges and specialist or senior counsel are valued for their expertise as effective mediators, arbitrators and expert referees, as an alternative to judicial resolution.

Law stated - 30 April 2025

UPDATE AND TRENDS

Recent developments and future reforms

39 | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The High Court has cemented Australia as a pro-arbitration state by recognising and upholding the enforcement of an international award made against a nation-state, in the recent decision of *Kingdom of Spain v Infrastructure Services Luxembourg S.a.r.l.* [2023] HCA 11, further promoting its international standing for efficient dispute resolution.

The decision of *Tesseract International Pty Ltd v Pascale Construction Pty Ltd* [2024] HCA introduces some challenges for claimants, however, as it reinforces that proportionate liability laws (that limit liability for apportionable claims such as a failure to take reasonable care and claims for damages under the Australian Consumer Law) form part of the general law of the land in Australia and apply equally to arbitration proceedings, unless expressly excluded by parties in their arbitration agreements.

There continues to be ongoing reform to how legal costs are assessed, to modernise and align the assessment processes with how law firms actually charge their clients. On 1



January 2025, updates to the Supreme Court of Victoria's Scale of Costs have replaced the traditional 'scale' model with a time-based model, ascribing maximum hourly rates for legal and non-legal staff. The Court will look on an item-by-item basis at whether the amount claimed is reasonable relative to the work performed, which is more in alignment with how costs are assessed in NSW and Western Australia.

Law stated - 30 April 2025



Peter Lettieri

Heather Richardson

Jonathan Kenny

plettieri@kkilawyers.com.au

hrichardson@kkilawyers.com.au

jkenny@kkilawyers.com.au

[Kalus Kenny Intelex](#)

[Read more from this firm on Lexology](#)

Austria

[Nikita Gorjaev](#), [Saoirse Rock](#), [Klaus Oblin](#)

[OBLIN Attorneys at Law](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

On the first level, civil proceedings are initiated before either the district court or the regional courts.

District courts have jurisdiction in most disputes relating to tenancy and family law (subject matter jurisdiction) and in matters with an amount in dispute of up to €15,000 (monetary jurisdiction). Appeals on points of fact and law are to be made to the regional courts. If a legal question of fundamental importance is concerned, another final appeal can be submitted to the Supreme Court.

Regional courts have monetary jurisdiction in matters involving an amount in dispute exceeding €15,000 and subject matter jurisdiction in intellectual property and competition matters, as well as various specific statutes (the [Public Liability Act](#), the [Data Protection Act](#) and the [Austrian Nuclear Liability Act](#)). Appeals are to be directed to the higher regional courts. The third and final appeal goes to the Supreme Court.

With respect to commercial matters, special commercial courts exist only in Vienna. Apart from that, the above-mentioned ordinary courts decide as commercial courts. Commercial matters are, for example, actions against business people or companies in connection with commercial transactions, unfair competition matters and the like. Other special courts are the labour courts, which have jurisdiction over all civil law disputes between employers and employees resulting from (former) employment as well as over social security and pension cases. In both commercial (insofar as commercial courts decide in panels) and labour matters, lay judges and professional judges decide together. The Court of Appeal in Vienna decides as the Cartel Court on the trial level. This is the only Cartel Court in Austria. Appeals are decided by the Supreme Court as the Appellate Cartel Court. In cartel matters, lay judges also sit on the bench with professional judges.

Law stated - 21 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Compared to common law countries, the role of Austrian judges is rather inquisitorial: to establish the relevant facts, judges can order witnesses to appear at a hearing, unless this is opposed by both parties, or otherwise appoint experts at their own discretion. In some proceedings, the tribunal will consist of a panel involving 'expert' lay judges, especially in antitrust cases, and 'informed' lay judges in labour and public interest matters.

Law stated - 21 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods are determined by substantive law.

Claims are not enforceable once they become statute-barred. The statute of limitations generally commences when a right could have been first exercised. Austrian law distinguishes between long and short limitation periods. The long limitation period is 30 years and applies whenever special provisions do not provide otherwise. The short limitation period is three years (which can be extended or waived) and applies, for example, to accounts receivable or damage claims.

The statute of limitations must be argued explicitly by one party, yet must not be taken into consideration by the initiative of the court (ex officio).

Law stated - 21 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

No, there is not. However, as a matter of general practice, a claimant will give notice to his or her opponent before commencing proceedings.

Law stated - 21 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

The proceedings are initiated by submitting a statement of claim with the court. The statement of claim is considered officially submitted upon receipt.

Service is usually effected by registered mail (or, once represented by a lawyer, via electronic court traffic, namely an electronic communication system connecting courts and law offices). The document is deemed served at the date on which the document is physically delivered to the recipient (or available for viewing).

Within the European Union, the Service Regulation ([Council Regulation \(EC\) 1393/2007](#) of 13 November 2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters) applies. Service to international organisations or foreigners enjoying immunities under public international law is effected with the assistance of the Austrian Ministry for Foreign Affairs. In all other cases, service abroad is effected in accordance with the respective treaties (particularly the [Hague Service Convention](#)).

The initiation of legal proceedings in civil courts involves the payment of court fees, referred to as *Pauschalgebühren* or flat fees, which are calculated based on the value of the claim.

The structure of these fees is enshrined in the Austrian Court Fees Act (-*Gerichtsgebührengesetz*). For instance, initiating a claim with a value between €35,000 and €70,000, the fee is at €1,556. For claims exceeding €350,000, the fee is 1.2 per cent of the claim value plus €4,203.

Law stated - 21 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The statement of claim is filed with the court and passed on to the defendant, along with an order to file a statement of defence. If the defendant replies in time (four weeks from receipt), a preparatory hearing will be held, which mainly serves the purpose of shaping the further proceedings by discussing the main legal and factual questions at hand as well as questions of evidence (documents, witnesses and experts). In addition, settlement options may be discussed. After an exchange of briefs, the main hearings follow.

The average duration of first instance litigation is one year. However, complex litigation may take significantly longer. At the appellate stage, a decision is handed down after approximately six months. In this regard, there are no expedited trial procedures available in Austrian civil litigation.

Law stated - 21 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Prior to pleading on the substance of the case, the defendant may challenge the court's jurisdiction by filing a lack of jurisdiction plea. In all cases where a written statement of defence is required, the objection must be raised there. As a general rule, if the defendant fails to raise the objection in a timely manner, the court's jurisdiction is no longer challengeable.

Austrian law does not allow for injunctions to prevent parallel proceedings in another jurisdiction. If the same case is pending in multiple courts, the priority principle applies, similar to the system outlined in the Brussels Regulation.

Law stated - 21 May 2025

Case management

I

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The courts allocate the cases in accordance with criteria defined on a regular basis by a particular senate.

Proceedings are primarily controlled by the judge in charge of the schedule. The judge orders the parties to submit briefs and produce evidence within a certain period of time. If necessary, the experts are also nominated by the judge. However, the parties may file procedural motions (eg, for a time extension), yet may also agree on a stay of the proceedings.

According to section 128 of the Austrian Code of Civil Procedure, judicial deadlines, except those explicitly non-extendable by law (termed 'emergency deadlines' or *Notfristen*), can be extended by the court.

Such extensions are granted if one party applies before the expiration of the original deadline and demonstrates significant or unavoidable reasons preventing them from meeting the deadline, which could result in irreparable harm if not extended. It's important to note that any extension must be justified with credible reasons to the court, and the court may decide on these requests without a hearing.

Law stated - 21 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

If a party manages to show that the opposing party is in possession of a specific document, the court may issue a submission order if:

- the party in possession has expressly referred to the document in question as evidence for its own allegations;
- the party in possession is under a legal obligation to hand it over to the other party; or
- the document in question was made in the legal interest of both parties, certifies a mutual legal relationship between them, or contains written statements that were made between them during negotiations of a legal act.

The presentation of other documents may be refused if they concern family life, the opposing party would violate obligations of honour by presenting the document, the disclosure of documents would lead to the disgrace of the party or of any other person or involves the risk of criminal prosecution, or if the disclosure violates any state-approved obligation of secrecy of the party from which it is not released or infringes on a business secret (or for any other reason similar to the above).

There are no special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure. Lastly, rules on pre-action disclosure do not exist.

Law stated - 21 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Following the attorneys' professional confidentiality rules, there is no obligation to produce documents unless the attorney advised both parties in connection with the disputed legal act. Attorneys have the right of refusal to give oral evidence if information was made available to them in their professional capacity.

Law stated - 21 May 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

No – evidence is taken during the course of the litigation, not before. The parties are required to produce the evidence supporting their respective allegations or where the burden of proof is on them, respectively.

Law stated - 21 May 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The main types of evidence are documents, party and witness testimony, expert testimony and judicial inspection. Written witness statements are not admissible.

There are no depositions and no written witness statements. Therefore, witnesses are obliged to appear at the hearing and testify. Witnesses are examined by the judge followed by (additional) questions by the legal representatives of the parties.

Restrictions on this obligation exist (eg, privileges for lawyers, doctors, priests or in connection with the possible incrimination of close relatives).

While the (ordinary) witness gives testimony concerning facts, the expert witness provides the court with knowledge that the judge cannot have. Expert evidence is taken before the trial court. An expert witness may be requested by the parties yet also called on the judge's own motion. An expert witness is required to submit his or her findings in a report. Oral comments and explanations must be given during the hearing (if requested by the parties). Private reports are not considered to be expert reports within the meaning of the [Austrian Code of Civil Procedure](#); they have the status of a private document.

As there is no room for concurrent evidence, no such rules exist.

Law stated - 21 May 2025

Interim remedies

13 | What interim remedies are available?

The granting of interim measures is regulated by the [Austrian Enforcement Act](#). In general, Austrian law provides for three main types of interim measures:

- to secure a monetary claim;
- to secure a claim for specific performance; and
- to secure a right or legal relationship.

The parties may turn to the court for assistance with safeguarding evidence both before and after a statement of claim has been filed. The required legal interest is considered established if the future availability of the evidence is uncertain or if it is necessary to examine the current status of an object.

Law stated - 21 May 2025

Remedies

14 | What substantive remedies are available?

Restitution in kind will be ordered by the court at the request of the creditor only if it is possible or feasible to perform. Compensation can be ordered for material damage, comprising actual loss or lost profits, or both, depending on the degree of fault of the breaching party. Compensation for non-material damage can be awarded for pain and suffering, non-material damage resulting from injury to sexual self-determination, significant violations of privacy, and others. It should be also noted that article 82 of the [General Data Protection Regulation](#) provides for possible compensation for non-material damages.

Parties may also negotiate a contractual penalty payable in the event of the debtor's failure to (properly) fulfil contractual obligations. The judge retains the power to reduce an excessive contractual penalty.

The statutory interest rate payable on monetary judgments is set at 4 per cent per year. However, monetary claims deriving from commercial transactions are subject to a higher interest rate in addition to the statutory base interest rate. The higher interest rate for such cases is determined by the Austrian National Bank. Punitive damages are not available.

Law stated - 21 May 2025

Settlement

15 |

| Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The settlement process is differentiated between extrajudicial and judicial settlements, each with distinct rules regarding confidentiality and the involvement of courts.

Extrajudicial Settlements are agreements reached outside the court's purview. Parties generally need to either withdraw the claim or agree to an indefinite stay of the proceedings, which are often preferred for their flexibility and confidentiality. Parties can include confidentiality clauses in the settlement agreement to ensure that the details remain private.

Judicial Settlements occur within the court system and become effective immediately, unless they include a specific revocation clause. Judicial settlements allow parties to settle matters within the pending dispute and on issues that have not yet been litigated, potentially incurring additional court fees.

During hearings, judges may allow parties to exchange the text of the settlement privately in writing, maintaining some level of confidentiality. Once the settlement is agreed upon, it is recorded in the court records, signed by the parties and their counsel, and entered into the court register, accessible to third parties only if they demonstrate a legal interest.

Law stated - 21 May 2025

Enforcement

16 | What means of enforcement are available?

The enforcement of judgments is regulated by the Austrian Enforcement Act.

Austrian enforcement law provides for various types of enforcement. A distinction is made between a title to be enforced directed at a monetary claim or at a claim for specific performance, and against which asset enforcement is to be levied.

Generally, the usual methods for enforcement are:

- seizure of property;
- attachment and transfer of receivables;
- compulsory leasing; and
- judicial action.

With respect to immovable property, three types of enforcement measures are available:

- compulsory mortgage;
- compulsory administration, with the goal of generating revenue to satisfy the claim; and
- compulsory sale of an immovable asset.

With respect to movable property, Austrian law distinguishes between:

- attachment of receivables;
- attachment of tangible and movable objects;
- attachment of claims for delivery against third-party debtors; and
- attachment of other property rights.

The amendment of the Austrian Enforcement Act in 2021 introduced a new position: the administrator in enforcement cases, who is nominated by the court. The administrator is responsible for determining the assets and conducting the proceedings. He or she has the same powers as a bailiff, except for compulsory rights (forcibly opening locked doors). The applicant must therefore no longer explicitly specify the assets that are to be seized but can instead apply for an 'enforcement package', which entails the compilation of a list of assets by the enforcement administrator.

Austrian law does not allow for the attachment of certain specific receivables, such as nursing allowance, rent aid, family allowance and scholarships.

Law stated - 21 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In most cases, court hearings are open to the public, although a party may ask the court to exclude the public from the hearing, provided that the party can show a justifiable interest for the exclusion of the public.

In principle, file inspection is only permitted to parties involved in the proceedings. Third parties may inspect files or even join the proceedings if they can demonstrate sufficient legal interest (in the potential outcome of the proceedings).

Under certain circumstances, hearings can be held privately, particularly when such measures are necessary to protect public order, sensitive information such as banking or business secrets, or personal matters related to family law.

Regarding the preservation of documents as part of the court process, parties have the right to object to producing evidence if it involves family affairs, the party's duty of preserving honour, the party itself or third parties from criminal prosecution, legal privilege or business secrets.

However, if a party has referenced the evidence during proceedings, or if there are substantive legal requirements for its disclosure, they must produce it. Additionally, documents considered of joint use between the parties, such as a written contract, cannot be withheld.

Law stated - 21 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

In its final judgment, the court will order who will have to bear the procedural costs (including court fees, legal fees and certain other costs of the parties (eg, costs for the safeguarding of evidence and travel expenses)). In principle, however, the prevailing party is entitled to reimbursement by the losing party of all costs of the proceedings. The court's decision on costs is subject to redress, along with or without an appeal on the court's decision on the merits.

According to the [Austrian Court Fees Act](#), the claimant (appellant) must advance the costs. The amount is determined on the basis of the amount in dispute. The decision states who should bear the costs or the proportion in which the costs of the proceedings are to be shared.

Lawyers' fees are reimbursed pursuant to the [Austrian Lawyers' Fees Act](#) irrespective of the agreement between the prevailing party and its attorney. Thus, the reimbursable amount may be lower than the actual payable legal fee, as any claim for reimbursement is limited to necessary costs. There are no rules on costs budgets; therefore, there are no requirements to provide a detailed breakdown for each stage of the litigation.

Rules on costs generally apply to most civil claims but vary in cases involving foreign parties. Foreign plaintiffs may need to provide security for costs.

Upon request, a claimant residing outside the European Union may be ordered to arrange for a security deposit covering the defendant's potential procedural costs unless bilateral or multilateral treaties provide otherwise. This also does not apply if the claimant has its residence in Austria, the court's (cost) decision is enforceable in the claimant's residence state or the claimant disposes of sufficient immovable assets in Austria.

Law stated - 21 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Unless agreed otherwise, lawyers' fees are subject to the Austrian Lawyers' Fees Act. Agreements on hourly fees are permissible and common. Lump sum fees are not prohibited but are less commonly used in litigious matters. Contingency fees are only permissible if they are not calculated as a percentage of the amount awarded by the court.

Legal aid is granted to parties who cannot afford to pay costs and fees. If the respective party can prove that the financial means are insufficient, court fees are reprieved or even waived, and an attorney is provided free of charge.

Third-party financing is permitted and usually available for higher amounts in dispute (minimum approximately €50,000), yet it is more flexible regarding fee agreements. Fee agreements that give a part of the proceeds to the lawyer are prohibited.

Law stated - 21 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Insurance for legal costs is commonly available in Austria and may – depending on the individual insurance policy – cover a wide range of costs arising out of legal proceedings, including the party's costs and potential liability for the counterparty's costs.

Law stated - 21 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The EU Directive 2020/1828 (Directive on Representative Actions) came into force in Austria on the 18 July 2024 after nearly a two-year delay. Austria implemented this directive through the Representative Actions Directive Implementation Amendment Act.

Under this new framework, litigants with similar claims can bring a form of collective redress. This is allowed when the claims involve multiple consumers who have been affected negatively by similar legal issues.

This is permitted through representative actions where qualified entities can represent groups of consumers in court. The consumers must opt-in to the action within three months. A minimum of 50 consumers must be involved in the action in order for it to proceed.

This new system is designed to make it easier for consumers to seek redress when individual claims would be too small or complicated to pursue alone. It applies in cases where the legal issues are similar across all the claims, making it efficient to handle them together in one singular lawsuit. The new framework supplements existing mechanisms by creating specialised procedures for representative actions, allowing qualified entities to seek not only injunctions but also redress measures on behalf of consumers.

Law stated - 21 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

There are ordinary appeals against the judgment of a trial court and appeals against the judgment of an appellate court. Procedural court orders can be challenged as well; the procedure in principle follows the same rules as appeals.

An appeal against a judgment suspends its legal validity and – with few exceptions – its enforceability. As a general rule, new allegations, claims, defences and evidence must not be introduced (they will be disregarded). Other remedies are actions for annulment or for the reopening of proceedings.

An appeal may be filed for four main reasons, including:

- procedural errors;
- unjustified exclusion of evidence;
- incorrect statement of facts; and
- incorrect application of the law.

Following an appeal, the appellate court may set aside the judgment and refer the case back to the court of first instance, or it may either alter or confirm the judgment.

Finally, a matter may only be appealed to the Supreme Court if the subject matter involves the resolution of a legal issue of general interest, namely if its clarification is important for purposes of legal consistency, predictability or development, or in the absence of coherent and previous decisions of the Supreme Court.

Law stated - 21 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

In addition to the numerous bilateral and multilateral instruments that Austria has concluded, the Austrian Enforcement Act, the Austrian Code of Civil Procedure and the [Austrian Jurisdiction Act](#) govern the recognition and enforcement of foreign judgments. In the case of a conflict between statutory law provisions and applicable treaty provisions, the latter will prevail. Although Austrian case law is not binding, it is given careful consideration.

Austria is a signatory to many bilateral and multilateral instruments. The most important in this regard is the [Brussels Ia Regulation](#) (Regulation (EU) No. 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)). The Brussels Ia Regulation lays down uniform rules to facilitate the free circulation of judgments in the European Union and applies to legal proceedings instituted on or after 10 January 2015.

The Brussels Ia Regulation replaces [Council Regulation \(EC\) No. 44/2001](#) of 22 December 2000 (the Brussels I Regulation, together with the Brussels Ia Regulation and others, 'the Brussels regime'), which remains applicable to all legal proceedings instituted prior to 10 January 2015.

The basic requirements for enforceability include the following:

- the award is enforceable in the state of issuance of the judgment;
- an international treaty or domestic regulation expressly provides for reciprocity between Austria and the state of issuance in the recognition and enforcement of judgments;
- the document instituting the proceedings was properly served on the defendant;
- the judgment to be enforced is produced with a certified translation; and
- there are no grounds on which to refuse recognition of enforceability.

A party seeking enforcement must request leave for enforcement from the respective court. The application for a declaration of enforceability must be submitted to the court of the place where the debtor is domiciled. The party may combine this request with a request for an enforcement authorisation. In such a case, the court will decide on both simultaneously.

Once a foreign judgment has been declared enforceable in Austria, its execution follows the same rules as those for a domestic judgment, meaning that the enforcement of judgments is regulated by the Austrian Enforcement Act.

Law stated - 21 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In the European Union, the procedure for obtaining oral or documentary evidence from other jurisdictions is regulated by the [Evidence Regulation](#) (Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters). In this regard, the regulation applies to both oral and documentary evidence and stipulates that judicial assistance requests may be communicated directly between the courts.

Bilateral treaties may apply for judicial assistance requests outside of the European Union.

Law stated - 21 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Yes – the [Austrian Arbitration Act](#) (contained in the Austrian Code of Civil Procedure (ACCP)) substantially reflects the [UNCITRAL Model Law on International Commercial Arbitration](#), while granting a great degree of independence and autonomy to the arbitral tribunal.

Unlike the UNCITRAL Model law, Austrian law does not distinguish between domestic and international arbitrations, or between commercial and non-commercial arbitrations. Special provisions apply to employment and consumer-related matters (these are found under sections 618 and 617 ACCP, respectively).

More generally, the Austrian Arbitration Act is contained in sections 577 to 618 ACCP. They provide the general framework for arbitration proceedings for both domestic and international arbitrations.

Law stated - 21 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing (section 581 ACCP). The formal requirements for an enforceable arbitration agreement are found under sections 581 to 585 ACCP.

An arbitration agreement must:

- sufficiently specify the parties (they must be at least determinable);
- sufficiently specify the subject matter of the dispute in relation to a defined legal relationship (this must at least be determinable and it can be limited to certain disputes, or include all disputes);
- sufficiently specify the parties' intent to have the dispute decided by arbitration, thereby excluding the state courts' competence; and
- be contained in either a written document signed by the parties or in telefaxes, emails or other communication exchanged between the parties, which preserve evidence of a contract.

Special provisions apply to consumers and employees (these are found under sections 617 and 618 ACCP respectively).

In decision No. 4 Ob 46/24d dated 25 June 2024, the OGH expressed its position on the possibility of the state court declaring the arbitration agreement valid. The OGH decided to hear the case because, since the entry into force of the Austrian Arbitration Act, there had been no case law on the level of the Supreme Court on the question of whether an action could be brought before the ordinary courts to determine the existence or non-existence of a valid arbitration agreement.

Despite the claimant's arguments, the OGH strictly stated that the legislature's intention back in time was to abolish state courts' declaratory actions regarding the validity of arbitration agreements. Further, this approach was approved in legal doctrine. Due to these facts, an action to declare the existence or non-existence of an arbitration agreement is inadmissible before state court.

Law stated - 21 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The ACCP provides for default provisions for the appointment of arbitrators. If the arbitration agreement is silent on the matter and absent an agreement by the parties, the Austrian arbitration law provides for a tribunal consisting of three arbitrators (section 586(2) ACCP).

The parties are free to agree on the procedure for challenging the appointment of an arbitrator (section 589 ACCP). In this regard, an arbitrator may only be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the qualifications agreed upon by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made, or after its participation in the appointment.

Law stated - 21 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Whether designated by an appointing authority or nominated by the parties, arbitrators may be required to have a certain experience and background regarding the specific dispute at hand. Such requirements may include professional qualifications in a certain field, legal proficiency, technical expertise, language skills or being of a particular nationality.

Many arbitrators are attorneys in private practice; others are academics. In a few disputes, concerning mainly technical issues, technicians and lawyers are members of the panel.

Qualification requirements can be included in an arbitration agreement, which requires great care as it may create obstacles in the appointment process (ie, an argument about whether the agreed requirements are fulfilled).

Law stated - 21 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the rules of procedure (eg, by reference to specific arbitration rules) within the limits of the mandatory provisions of the ACCP. Where the parties have not agreed on any set of rules, or set out rules of their own, the arbitral tribunal

will, subject to the mandatory provisions of the ACCP, conduct the arbitration in such a manner as it considers appropriate.

Mandatory rules of arbitration procedure include that the arbitrators must be, and remain, impartial and independent. They must disclose any circumstances likely to give rise to doubts about their impartiality or independence. The parties have the right to be treated in a fair and equal manner, and to present their case. Further mandatory rules concern the arbitral award, which must be in writing, and the grounds on which an award can be challenged.

Further, an arbitral tribunal must apply the substantive law chosen by the parties, failing which it will apply the law that it considers appropriate.

Law stated - 21 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Austrian courts may only intervene in arbitration matters when they are expressly permitted to do so under sections 577 to 618 ACCP. Both the competent court and an arbitral tribunal have jurisdiction to grant interim measures in support of arbitration proceedings. The parties can exclude the arbitral tribunal's competence for interim measures, but they cannot exclude the court's jurisdiction on interim measures.

The enforcement of interim measures is in the exclusive jurisdiction of the courts.

The intervention of courts is limited to the issuance of interim measures, assistance with the appointment of arbitrators, review of challenge decisions, decision on the early termination of an arbitrator's mandate, enforcement of interim and protective measures, court assistance with judicial acts that the arbitral tribunal does not have the power to carry out, decision on an application to set aside an arbitral award, determination of the existence or non-existence of an arbitral award and recognition and enforcement of awards.

Law stated - 21 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes – an arbitral tribunal has wide powers to order interim measures on the application of one party if it deems it necessary to secure the enforcement of a claim or to prevent irretrievable harm. In contrast to the interim remedies available in court proceedings, an arbitral tribunal is not limited to a set of enumerated remedies. However, the remedies should be compatible with enforcement law to avoid difficulties at the stage of enforcement. In this regard, the arbitral tribunal may request any party to provide appropriate security in connection with such measures to prevent frivolous requests (section 593(1) ACCP).

The arbitral tribunal or any party with the approval of the arbitral tribunal may request a court to perform judicial acts (eg, service of summons or taking of evidence) for which the arbitral tribunal does not have the authority.

Law stated - 21 May 2025

Award

32 | When and in what form must the award be delivered?

The form requirements for arbitral awards are found under section 606 ACCP and are in line with default provisions. The form requirements stipulate that the arbitral award must:

- be in writing;
- be signed by the arbitrators involved in the proceedings;
- display its date of issuance;
- display the seat of arbitral tribunal; and
- state the reasons upon which it is based. The arbitral award has the effect of a final and binding court judgment (section 607 ACCP).

Law stated - 21 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

The only available recourse to a court against an arbitral award is an application to set aside the award. This also applies to arbitral awards on jurisdiction. Courts may not review an arbitral award on its merits. The application to set aside is to be filed within three months from the date on which the claimant has received the award. There are no appeals against an arbitral award.

An arbitral award shall be set aside if:

- no valid arbitration agreement exists or if the arbitral tribunal denied its jurisdiction even though a valid arbitration agreement existed;
- a party was incapable of concluding a valid arbitration agreement;
- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the case;
- the arbitral award deals with a dispute that is not covered by the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement or the submission of the parties to arbitration;
- the constitution or composition of the arbitral tribunal was in violation of the respective rules; and

- the arbitration proceedings were conducted in violation of Austrian public policy.

Furthermore, an award can be set aside if the preconditions exist under which a court judgment can be appealed by filing a complaint for revision pursuant to section 530(1), Nos. 1–5 ACCP. This provision determines circumstances under which criminal acts led to the issuance of a certain award. An application to set aside an award on these grounds must be filed within four weeks of the date on which the sentence on the respective criminal act became final and binding.

An award may also be set aside if the matter in dispute is not arbitrable under domestic law.

Notably, in decision No. 18 OCg 1/24g dated 17 October 2024, the OGH rejected an application of the claimant for setting aside an arbitral award and provided a complete overview of the setting aside procedure under section 611 of the Austrian Code of Civil Procedure (hereinafter ACCP) and again reaffirmed the existence of high threshold for annulment of the arbitral award on the grounds of violation of 'substantive' public policy (section 611 (2) 8 ACCP), 'procedural' public policy (section 611 (2) 5 ACCP) and right to be heard (section 611 (2) 2 ACCP), which was not fulfilled in this case.

Law stated - 21 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The procedure for the enforcement of arbitral awards is set out in both the ACCP (section 614) and the Austrian Enforcement Act (section 409).

Foreign arbitral awards are enforceable on the basis of bilateral or multilateral treaties that Austria has ratified – the most important of these legal instruments being the [New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958](#) and the [European Convention on International Commercial Arbitration of 1961](#). In this regard, enforcement proceedings are essentially the same as for foreign judgments. Austria is therefore a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Domestic arbitral awards are enforceable in the same way as domestic judgments.

Law stated - 21 May 2025

Costs

35 | Can a successful party recover its costs?

With respect to costs, arbitral tribunals have broader discretion and are, in general, more liberal than courts. The arbitral tribunal is granted discretion in the allocation of costs but must take into account the circumstances of the case, in particular, the outcome of the

proceedings. As a rule of thumb, costs follow the event and are borne by the unsuccessful party, but the tribunal can also arrive at different conclusions if this is appropriate to the circumstances of the case.

The ACCP is silent on the type of costs that might be subject to reimbursement. Where costs are not set off against each other, as far as possible the arbitral tribunal must, at the same time as it decides on the liability for costs, also determine the amount of costs to be reimbursed. In general, attorneys' fees calculated on the basis of hourly rates are also recoverable.

An exception to the above rule is found under section 609(2) ACCP, which empowers the arbitral tribunal to decide upon the obligation of the claimant to reimburse the costs of the proceedings if it has found that it lacks jurisdiction on the grounds that there is no arbitration agreement.

Law stated - 21 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The main extra-judicial methods provided for by statute are arbitration, mediation (mainly in family law matters) and conciliation boards in housing or telecommunication matters.

In addition, various professional bodies (lawyers, public notaries, doctors and civil engineers) provide for dispute resolution mechanisms concerning disputes between their members or between members and clients.

Mediation is governed by the [Civil Law Mediation Act](#). However, a solution reached with the assistance of the mediator is not enforceable by the court.

Noteworthy, Vienna International Arbitration Centre (hereinafter VIAC) rendered the new version of the Vienna Rules of Arbitration (hereinafter Vienna Rules) and the Vienna Rules of Mediation (hereinafter Vienna Mediation Rules) entered into force on 1 January, which will apply to all proceedings commenced after 31 December 2024.

The main amendment in the new version of the Vienna Mediation Rules is the detailed regulation of the parties' right to initiate arbitration or any other proceedings regarding the same dispute in which a mediation procedure has been initiated or is ongoing. The previous version of article 10 of the Vienna Mediation Rules gave the parties an unconditional right to initiate arbitration, legal, or any other proceedings regardless of ongoing mediation under the Vienna Mediation Rules.

The new version of article 10 adds the clause 'In the absence of a deviating agreement between the parties' meaning that the parties may waive their right to resort to arbitration or national courts in favour of mediation. However, this waiver is not total and is limited by two conditions outlined in article 10 (2) 2.5 of the Vienna Mediation Rules:

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time limit of three months during which the mediation has not brought the parties to an amicable resolution of the dispute; and

- termination of the mediation agreement.

Moreover, the text of the mediation clauses was simplified. Currently, VIAC offers two mediation clauses: the first option for the incorporation into a contract and the second option for the ongoing dispute. Notably, VIAC creates detailed supplementary terms for the mediation clauses that the parties can adopt and specify the number of arbitrators, location of the mediation sessions, language of mediation, appointment procedure of mediation, qualifications of mediator, reference to the final solution of the dispute in arbitration and exclusion clause of the parallel proceedings for the specific period of time.

Further, VIAC substantially lowers its administrative fees regarding mediation proceedings, setting a maximum amount of fees no more than €10,000. Currently, for a dispute equal to €500,000, the administrative fee will cost €2,000, for a dispute equal from €500,001 to €5,000,000, the administrative fee will cost €5,000, and for a dispute over €5,000,001, the administrative fee will cost €10,000, which is the maximum.

Additionally, in the amended version of the Vienna Mediation Rules under article 8 (5), the Secretary General may deviate from the parties' determination in fixing the amount in dispute if the parties have clearly undervalued it or assigned no value to it.

Finally, it is evident that VIAC enhances its mediation rules to avoid uncertainty when mediation proceedings intersect with arbitration proceedings and to increase the popularity of mediation in general.

Law stated - 21 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

No, there are no general requirements under Austrian law providing for obligatory settlements or requiring parties to consider alternative dispute resolution before commencing arbitration or litigation. However, it is not uncommon that judges – at the beginning of trial – informally encourage parties to explore settlement options or turn to mediators first.

Illustratively, the OGH expresses its position regarding the conciliation clause in recent decision No. 4 Ob 33/24 dated 22 October 2024. The OGH stated that reference to the conciliation procedure in the arbitration agreement or dispute resolution clause does not prescribe a mandatory attempt at conciliation procedure, which would be a prerequisite for the admissibility of claim.

Law stated - 21 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

Law stated - 21 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Legislative developments

One of the key legislative developments of the past year is the EU Directive 2020/1828 (Directive on Representative Actions), which came into force in Austria on 18 July 2024, after an almost two-year delay. The directive was transposed into Austrian law through the 'Amendment to the Directive on the Implementation of Representative Actions' (VRUN) and established a framework for collective redress. The highlights of this new directive will be outlined below.

A central component to this reform was the introduction of the Act on Qualified Entities for Collective Redress (QEG). Under this Act, 'qualified entities' are recognised as any Austrian organisations that in the past were entitled to seek collective redress in the form of injunctive relief. The Act also outlines the requirements that must be fulfilled for other entities to be considered a 'qualified entity' by the federal cartel prosecutor. The requirements to be deemed a qualified entity for cross-border representative actions are as follows (section 1(1) QEG):

1. has already been active for twelve months to protect consumer interests prior to filing the application & has legitimate interest in protecting consumer interests;
2. is non-profit;
3. has not been declared bankrupt or has active insolvency proceedings against its assets;
4. is independent and not under the influence of persons, excluding consumers, in particular traders who have an economic interest in bringing a representative action, including in the case of third-party financing, and has procedures in place to that end to prevent such influence and conflicts of interest between the applicant, its financiers and consumer interests; and
5. make publicly available, in an appropriate manner, in particular on its website, in clear and intelligible language, information demonstrating compliance with the

criteria set out in points 1 to 4, as well as information on the sources of its funding in general, its organisational, management and membership structure, its purpose of the articles of association and its activities.

On top of the aforementioned requirements, two more must be fulfilled to be considered as a qualified institution for domestic representative actions (section 2(1) QEG):

- it must appear certain that it will continue to fulfil its statutory tasks effectively and appropriately in the future on the basis of its past activities and its material, personnel and financial resources; and
- it does not obtain more than 20 per cent of its financial resources from donations, unpaid financial contributions or gifts.

Notably, the Vienna Commercial Court holds exclusive jurisdiction over these collective proceedings.

A key decision Austria made during the implementation of VRUN is to adopt an 'opt-in' model for collective redress action. This means that for a collective redress action consumers must 'opt-in' (typically within three months after being announced in the legal gazette) to participate in the class action. Unlike opt-out models (where all affected consumers are automatically included unless they withdraw), this system respects individual choice even though this may result in smaller group sizes. In order for a collective redress action to proceed, the qualified entity must show that at least 50 consumers are affected by the alleged violation. A fee may be charged by the qualified entity, but the fee is capped at 250 EUR or 20 per cent of the claimed amount (whichever option is lower).

Section 6(1) QEG also permits third-party litigation funding, but it is subject to the following requirements:

- third-party funder must not be a competitor of the defendant company nor must it be economically or legally dependent on the latter; and
- decisions made by the qualified entity in the proceedings may not be unduly influenced by the third-party funder to the detriment of consumers

The above restrictions are in place to avoid conflicts of interest.

Overall, the key changes discussed above represent a significant shift in how collective redress is handled and improves collective dispute resolution in Austria. The VRUN and QEG together create a more structured and accessible framework for consumers to pursue justice, especially in cases where individual legal action would be impractical. Further, the reforms align Austria's legal system with the EU Representative Actions Directive, strengthening consumer protection.

Dispute resolution reform

Following the national elections in September 2024, Austria experienced an extended coalition negotiation period of almost five months. On 3 March 2025, the Stocker government was sworn in as the Government of Austria. During the interim, legislative activity was limited and no new reforms related to dispute resolution were developed.

Further, since the new governments formation, there has been no additional legislative initiatives for dispute resolution.

Law stated - 21 May 2025



RECHTSANWÄLTE
ATTORNEYS AT LAW

Nikita Gorjaev
Saoirse Rock
Klaus Oblin

nikita.gorjaev@oblin.at
rocksaoirse@gmail.com
klaus.oblin@oblin.at

OBLIN Attorneys at Law

[Read more from this firm on Lexology](#)

Canada - Ontario

[L Leslie Dizgun](#), [Ciarán McGrath](#), [Payam Ezzatian](#)

[Brauti Thorning LLP](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

As a result of Canada's federal system, the civil court system in Ontario consists of both federal and provincial courts.

Matters subject to federal jurisdiction are heard in the Federal Court to which an appeal may lie to the Federal Court of Appeal, and, ultimately, to the Supreme Court of Canada, which is Canada's final court of appeal.

Matters subject to provincial jurisdiction are heard in the Superior Court of Justice, which includes both trial and appeal courts, and in the Court of Appeal for Ontario, which hears appeals from certain decisions of the Superior Court of Justice. A party may seek leave to appeal a decision of the Court of Appeal for Ontario to the Supreme Court of Canada.

Ontario's Superior Court of Justice is divided into eight judicial regions.

Further, the Superior Court of Justice contains several specialist courts including the Divisional Court, the Small Claims Court and the Family Court:

- the Divisional Court hears appeals of certain decisions of the Superior Court of Justice, certain administrative tribunals in Ontario, and judicial review applications;
- the Small Claims Court is a civil litigation court with a monetary jurisdiction of C\$35,000; and
- the Family Court has jurisdiction with respect to certain family law matters.

At the regional level within the Superior Court of Justice, there are also certain specialised court lists. For example, the Toronto region has an 'Estates List,' which is presided over by judges who hear proceedings involving issues of estate, trust and capacity law.

The Toronto region also has a 'Commercial List,' which is presided over by judges with significant experience in managing complex commercial litigation. The Commercial List was established in 1991 and provides an expedited process for certain commercial disputes as well as bankruptcy and insolvency matters.

Law stated - 29 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Most civil trials in Ontario are heard by a judge alone, rather than by a judge and a jury. As Ontario is a common law jurisdiction, judges hearing civil trials do not have an inquisitorial role, although they may ask questions of witnesses or counsel.

Rule 47 of the Rules of Civil Procedure permits a party to a civil proceeding to deliver a jury notice, requiring a trial by jury. However, there are several exceptions in which a jury

trial will not be permitted. For example, a jury trial is not available in Small Claims Court or proceedings seeking certain forms of relief such as a declaration or injunction or relief against a municipality (section 108 of the Courts of Justice Act).

Further, a party may bring a motion to strike a jury notice, pursuant to Rule 47.02 of the Rules of Civil Procedure, in circumstances in which a jury trial would not be appropriate, which can include cases involving significantly complex issues of fact or law.

When a jury trial is permitted, the jury, comprising six jurors, may be called upon to make findings of fact or assess damages, or both. A jury does not decide questions of law, which is the role of the judge.

The jury's decision does not have to be unanimous but requires a majority of five out of six jurors on each question put to them.

To attempt to promote diversity on the bench, the government of Canada announced reforms of the judicial appointment process in 2016, which has included mandating the Office of the Commissioner for Judicial Affairs to collect and publish statistics and demographic information on judicial applicants and appointments, which information is based on voluntary disclosure by applicants through self-identification in the questionnaire for judicial appointment.

Law stated - 29 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

In Ontario, most civil causes of action are subject to two types of limitation period: a basic two-year limitation period (Limitations Act 2002, section 4) and an 'ultimate' limitation period of fifteen years (Limitations Act 2002, section 15).

However, some types of claim are subject to shorter or longer limitation periods. For example, certain contracts of insurance, such as fire or automobile insurance can in certain circumstances be subject to a shorter limitation period applicable to a claim by the insured against the insurer for coverage. Another example would be the short timelines applicable to the preservation and perfection of a lien under the Construction Act.

The basic two-year limitation period is presumed to run from the date on which the act or omission on which the claim is based took place, unless it is proven that the claim was 'discovered' on a later date. In this regard, a claim will be deemed to be discovered on the earlier of:

- the day on which the claimant first knew that its injury, loss or damage had occurred and was caused by or contributed to an act of omission of the person against whom the claim is made, and that having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
- the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known the matters set out above.

Unlike the basic two-year limitation period, the 15-year ultimate limitation period runs regardless of whether the claim has been discovered. Instead, the 15-year ultimate limitation period runs from the date on which the act or omission on which the claim is based takes place. In the case of a continuous act or omission, this would be the day on which the act or omission ceases.

Aside from discovery of a claim, there are certain other circumstances in which a limitation period will not run. For example, the basic two-year limitation period and the ultimate limitation period do not run during any time in which the person with the claim is:

- incapable of commencing a proceeding in respect of the claim because of a physical, mental or psychological condition, and not represented by a litigation guardian in relation to the claim; or
- a minor and not represented by a litigation guardian in relation to the claim.

In addition, a limitation period will be suspended in cases of fraudulent concealment of a claim or where a person against whom a claim is made wilfully misleads the claimant as to the appropriateness of a proceeding as a means of remedying the harm.

Further, certain claims are not subject to a limitation period, including, for example, a proceeding based on a sexual assault or a proceeding seeking a declaration or to enforce a court order.

Parties can also agree to either extend or shorten a limitation period in certain circumstances and subject to certain conditions. For example, parties may vary or exclude a limitation period but only if none of the parties to the agreement is a consumer as defined by the Consumer Protection Act, 2002.

Law stated - 29 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In certain situations, a claimant must give notice of its claim or take certain other steps prior to commencing a civil proceeding in Ontario. For example:

- at least 60 days before commencing certain proceedings against the Crown, a claimant must serve the Crown with a notice of its claim containing sufficient particulars to identify the occasion out of which the claim arose;
- certain claims relating to damage sustained as a result of the failure to repair a highway or roadway require notice in writing to be delivered to the applicable Minister or municipality within 10 days of the injury occurring; however, the failure to give such notice is not a bar to a proceeding if the court finds that there was a reasonable excuse and that the Crown or municipality is not prejudiced; and
- a plaintiff is barred from commencing an action for libel in a newspaper or in a broadcast unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's attention, served the defendant with a written notice.

In Ontario, a potential plaintiff may seek a pre-litigation disclosure order, known as a *Norwich* order, compelling a third party to preserve and disclose records in its possession. Given the intrusive nature of such an order, Ontario courts will only grant such relief in exceptional circumstances in which the disclosure is needed for a legitimate objective, such as tracing the assets of a suspected fraudster.

Law stated - 29 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

In Ontario, a civil proceeding can be commenced either as an action or application. A proceeding may be commenced as an application in certain limited circumstances including when it is unlikely that there will be any material facts in dispute requiring a trial. As such, it is more typical for a proceeding to be commenced as an action.

In either scenario, the proceeding is commenced by the claimant filing an 'originating process' with the court. In the case of an action, the originating process is a notice of action or a statement of claim.

In the case of an application, the originating process is a notice of application.

The claimant must then serve the originating process on the opposing party. In the case of an action, the statement of claim (and, if applicable, the notice of action) must be served personally or by 'alternative to personal service' on the defendant within six months after the date on which the proceeding was commenced. The Rules of Civil Procedure set out the manner in which an originating process may be served by 'alternative to personal service,' including service at a person's residence or a corporation's head office, registered office or principal place of business in Ontario or its attorney for service in Ontario.

The Superior Court of Justice has the ability to actively manage its caseload, including with the use of motion or trial scheduling court as well as case conferences.

Since the covid-19 pandemic, the civil court system in Ontario has been experiencing significant backlogs and delay. To address these issues, the Superior Court of Justice has sought to triage its motion and trial lists and make use of case conferences to grant substantive relief without the usual formalities of a motion.

The courts charge filing fees for commencing a proceeding and filing certain other documents such as a statement of defence or a motion record. It is possible to apply for a waiver of such fees depending on certain factors including the relevant individual's financial circumstances.

Law stated - 29 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

In the case of a civil action commenced in Ontario, the originating process must be served on the defendant within six months.

The defendant then must serve a defence within 20 to 60 days, depending on whether the defendant was served in Ontario (20 days), elsewhere in Canada or in the United States (40 days), or anywhere else (sixty days). A defendant can extend the time in which to serve a defence by another 10 days by delivering a 'notice of intend to defend.' These deadlines are not strictly enforced in most cases. Further, counsel in Ontario are required to grant reasonable extensions of procedural deadlines provided that such an extension would not prejudice the rights of their client.

If a defendant wishes to commence a counterclaim, they must do so in the same document containing their statement of defence, which would be titled as a 'Statement of Defence and Counterclaim.'

After the parties have exchanged pleadings, the parties are required to turn their minds to the discovery process which is often formalised in a 'discovery plan', setting out the intended scope of disclosure.

After agreeing the terms of a discovery plan, the usual next step is the exchange of relevant documents, which are listed in each party's affidavit of documents. Next, the parties attend oral examinations, known as 'examinations for discovery'.

If a procedural motion is required at some stage (eg, a motion to compel a party to disclose relevant documents or to answer a question refused at an examination for discovery), the moving party schedules a hearing date and delivers a 'notice of motion' along with any supporting documentation such as affidavits, after which the responding party may deliver responding material.

Mediation is mandatory in civil actions commenced in three courts within the Superior Court of Justice: Toronto, Ottawa and Windsor. However, parties often agree to attend a mediation even when it is not mandatory. In Ontario, a mediation typically takes place after the completion of the examinations for discovery, although 'pre-discovery' mediations are not uncommon.

Typically, if the post-discovery mediation fails, the next step will involve the plaintiff 'setting the action down for trial,' which involved delivering a 'trial record'. The court will then schedule a pretrial conference, presided over by a judge who has the authority to engage in a judicial mediation of the matter and to direct that the parties take any further steps that might be required before the matter will be ready for trial.

Law stated - 29 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Yes, a party to a civil proceeding in Ontario can challenge the court's jurisdiction, whether because the court does not have jurisdiction (eg, there is no 'real and substantial connection' to Ontario or by operation a forum selection clause or an arbitration agreement) or, although the court has jurisdiction, another forum is more appropriate (ie, the doctrine of *forum non conveniens*).

A party wishing to make such a challenge should exercise caution that it does not inadvertently 'attorn' or consent to the court's jurisdiction.

The Supreme Court of Canada has established a two-part test for granting an anti-suit injunction, as set out in *Amchem Products Incorporated v British Columbia (Workers' Compensation Board)*.

The first part of the test involves a determination of whether the domestic court is the natural forum with the closest connection to the action and the parties, and whether there is no alternative forum that is 'clearly more appropriate.' However, if a foreign court, having applied the principles relating to *forum non conveniens*, has already reasonably concluded that it is the natural forum and that there is no alternative forum that is clearly more appropriate, the domestic court should show deference to the foreign court's decision and should dismiss the application for an anti-suit injunction.

However, if the domestic court concludes that the foreign court assumed jurisdiction on a basis that is inconsistent with the principles relating to *forum non conveniens* and that the foreign court's conclusion could not reasonably have been reached had it applied those principles, the domestic court must go to the second step of the test by considering the injustice or loss of advantage to the parties that might arise if the action were to proceed in either the foreign court or the domestic court.

Lastly, it should be noted that the courts in Ontario consider it preferable that the party seeking the anti-suit injunction first seek a stay of the foreign proceeding. However, in certain circumstances, the courts in Ontario have granted an anti-suit injunction notwithstanding the fact that the moving party had not first sought a stay from the foreign court.

Law stated - 29 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

As noted above, the parties can negotiate and agree upon the terms of a discovery plan. In addition to addressing the scope of documentary and oral discovery obligations, a discovery plan can address the timing of any pre-trial steps such as motions and mediation. The parties can also extend certain procedural time limits on consent without involving the court or by obtaining a court order upon filing a signed consent memorialising the consent of the parties.

If the parties cannot agree on case management matters, they may seek the involvement of the court. Judicial case management under Rule 77 of the *Rules of Civil Procedure* is available for certain proceedings commenced in the Superior Court of Justice in Toronto,

Ottawa or Windsor. In considering whether to assign a proceeding for case management, the court will have regard to all relevant circumstances including the complexity and importance of the matter and the amount of intervention by the court that the proceeding is likely to require.

Where judicial case management is not available, the parties may seek the intervention of the courts in enforcing litigation timetables or granting procedural orders, which may be done at a case conference or the hearing of a motion.

Law stated - 29 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Parties to a civil proceeding in Ontario are required to preserve all relevant documents in their power, possession or control.

Each party to a civil action must prepare an affidavit of documents, listing all such documents, which are divided into three categories:

- Schedule 'A' documents which are in the party's possession and which it does not object to producing for inspection by the opposing party;
- Schedule 'B' documents which are in the party's possession and which it objects to producing for inspection by the opposing party because the documents are subject to a claim of privilege; and
- Schedule 'C' documents which are no longer in the party's possession.

The obligation to preserve and produce documents extends to all relevant documents, including those unhelpful to the party's case, subject to any claims of privilege or certain other considerations such as the proportionality of producing the documents in the circumstances.

Law stated - 29 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Solicitor-client privilege

Solicitor-client privilege protects communication between a solicitor and their client, in circumstances in which the communication involves legal advice and the client intended the communication to be confidential.

Solicitor-client privilege is permanent and will continue to apply after the relationship has terminated, after the death of the client, or in the case of an organisation, after its dissolution or bankruptcy. Additionally, solicitor-client privilege belongs to the client, not the lawyer. The client has the sole discretion to decide whether to end the privilege.

Solicitor-client privilege can apply to communications with in-house counsel provided they concern the in-house counsel's function as a lawyer, as opposed to communications made while the in-house counsel is performing a business or other function which may not be privileged.

Litigation privilege

Litigation privilege applies to certain documents created by a party for the 'dominant purpose' of the litigation in question.

Settlement privilege

Settlement privilege applies to certain documents exchanged for the purpose of attempting to settle a dispute.

Law stated - 29 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

In a civil action in Ontario, a party who intends to call an expert witness at trial shall, not less than ninety days before the pre-trial conference, serve on every other party to the action a report, signed by the expert, containing the following information:

- the expert's name, address and area of expertise;
- the expert's qualifications and employment and educational experiences in their area of expertise;
- the instructions provided to the expert in relation to the proceeding;
- the nature of the opinion being sought and each issue in the proceeding to which the opinion relates;
- the expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range;
- the expert's reasons for their opinion, including:
 - a description of the factual assumptions on which the opinion is based;
 - a description of any research conducted by the expert that led them to form the opinion, and
 - a list of every document, if any, relied on by the expert in forming the opinion; and

- an acknowledgement of expert's duty (contained on a document called 'Form 53') signed by the expert.

A party who intends to call an expert witness at trial to respond to the expert witness of another party shall, not less than 60 days before the pretrial conference, serve on every other party to the action a report, signed by the expert, containing the same information as set out above.

There is no obligation to provide written evidence from fact witnesses, unless ordered by the court or agreed by the parties. In this regard, the parties will in certain circumstances exchange 'Will Say' statements of their intended fact witnesses.

The courts in Ontario recognise several categories of privilege that can relieve a party from the obligation of producing or disclosing relevant documents. The most commonly raised grounds of privilege are solicitor-client privilege, litigation privilege and settlement privilege.

Law stated - 29 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In civil trials in Ontario, the evidence of fact and expert witnesses is typically given orally.

However, in certain circumstances, a court may determine a civil proceeding on the basis of affidavit evidence. For example:

- a court may order a summary trial comprising evidence-in-chief adduced by affidavit, followed by in-person cross-examinations; and
- in a Small Claims Court, a signed witness statements, which can include a written report of an expert, can be received in evidence, without the witness being required to testify orally, provided the party seeking to introduce the evidence serves the signed witness statement on the opposing party at least 30 days before the trial. After being served with the signed witness statement, the opposing party may elect to summon the witness to be cross-examined at the trial.

Law stated - 29 May 2025

Interim remedies

13 | What interim remedies are available?

In certain circumstances, Ontario's Superior Court of Justice can grant various forms of interim relief, including freezing and search orders. For example, in appropriate circumstances, an Ontario court may grant:

- an interim or interlocutory freezing order known as a *Mareva* injunction, restraining the dissipation of assets;

- a search order known as an *Anton Piller* order, permitting a moving party access to a responding party's premises to search for and seize evidence and records that might otherwise be destroyed; or
- a pre-litigation disclosure order, known as a *Norwich* order, compelling a third party to preserve and disclose records in its possession.

When seeking an interim or interlocutory injunction in a commercial case, the moving party is usually required to provide an undertaking as to damages, which means that it will be required to compensate the responding party if the court ultimately determines that the granting of the injunction had caused damage to the responding party.

If a party seeks an urgent injunction, it may bring an interim motion ex parte (ie, without notice). However, if the court grants the injunction, it will typically require a further hearing on notice to the responding party, so the court may determine whether the injunction should continue.

To obtain a *Mareva* injunction, the moving party must establish that:

- it has a strong prima facie case of theft or fraud;
- the defendant has assets in the jurisdiction;
- there is a serious risk that the defendant will remove or dissipate its assets before judgment can be obtained;
- the plaintiff will suffer irreparable harm if the injunction is not granted, such as it will not be able to enforce any judgment obtained because of the removal or dissipation of assets prior to trial; and,
- the balance of convenience favours granting the injunction, in the sense that the harm suffered if the injunction is not granted will exceed the harm that will be suffered if it is.

There are 'four essential conditions for the making of an *Anton Piller* order' (*Celanese Canada Inc v Murray Demolition Corp*, [2006 SCC 36](#), at [paragraph 35](#)):

- the plaintiff must demonstrate a strong prima facie case;
- the damage to the plaintiff of the defendant's alleged misconduct, potential or actual, must be very serious;
- there must be convincing evidence that the defendant has in its possession incriminating documents or things; and
- it must be shown that there is a real possibility that the defendant may destroy such material before the discovery process can do its work.

Law stated - 29 May 2025

Remedies

14 | What substantive remedies are available?

In Ontario, a party may seek various forms of monetary damages including:

- pecuniary or 'special' damages;
- non-pecuniary or 'general' damages; and
- punitive damages.

Essentially, pecuniary damages are readily quantifiable and would, among other things, include lost profits, out-of-pocket expenses or the value of stolen property. Non-pecuniary damages, on the other hand, are more difficult to quantify and would include, among other things, compensation for pain and suffering, loss of amenities and loss of expectation of life.

Punitive damages can be awarded in circumstances in which a court wishes to punish and deter certain conduct.

In addition to monetary damages, a party may seek non-monetary relief such as, for example, specific performance, a declaration, an injunction, an order requiring the sale of real property, disgorgement of profits or accounting.

A party that succeeds in obtaining monetary compensation may also be entitled to pre-judgment and post-judgment interest as well as recovery of a portion of their legal costs.

Law stated - 29 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Settlement of a civil proceeding takes place by negotiation of the parties and, as such, is a consensual process resulting in a binding agreement.

In addition, the civil litigation system in Ontario includes procedures such as mandatory mediation (a requirement in civil actions commenced in Toronto, Ottawa and Windsor), pre-trial conferences which are presided over by a judge and, in small claims court, settlement conferences, in which the parties are required to conduct without-prejudice settlement discussions without having any obligation to reach a settlement.

If a settlement is reached, a party may bring a motion to enforce the settlement agreement, if it is breached by another party.

Settlement negotiations are considered 'without prejudice,' meaning that such communications are inadmissible and cannot be relied upon in court, subject to certain limited exceptions. As such, settlement negotiations are generally not disclosed to the court until after it has made a final determination on the merits, at which point the parties will typically be entitled to disclose the existence of any settlement offers that may have been exchanged to date which may be relevant in establishing the quantum of legal costs to be paid by the unsuccessful party to the successful party. Another circumstance, as noted

above, in which settlement offers or negotiations might be disclosed to the court would be in the context of a motion to enforce a settlement agreement.

Law stated - 29 May 2025

Enforcement

16 | What means of enforcement are available?

In Ontario, a judgment creditor can enforce the judgment in various ways including the seizure and sale of real property and the garnishment of money owed to the judgment debtor by a third party.

A judgment creditor has a right to conduct an 'examination in aid of execution' which can assist in better understanding the judgment debtor's financial situation, the location of any assets and the existence of any income or debts. The examination takes place under oath or affirmation. A judgment creditor has the right to conduct such an examination of the debtor once a year (more than one examination per year would require leave of the court).

If a judgment debtor fails to attend an examination in aid of execution or refuses to disclose information about their financial situation or to provide relevant records such as bank statements or tax returns, the judgment creditor can seek a contempt order, which, if granted by the court, can potentially result in imprisonment until the contempt has been 'purged'.

Law stated - 29 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Civil proceedings in Ontario are subject to the open court principle. As such, there is a presumption that court hearings should be held in public and that court documents should be accessible to the public.

However, a court may exercise its discretion to place limits on court openness (eg, by rendering a 'sealing order', limiting or barring public access to the court file, or by directing that the hearing of a matter will be held in camera, which limiting or barring members of the public from attending). A court may also render a publication ban, limiting or barring publication of information disclosed during a hearing.

When deciding whether to exercise its discretion to place limits on court openness, a court will consider the necessity and proportionality of the proposed order. More specifically, the party asking a court to curtail the open court presumption must establish that (*Sherman Estate v Donovan*, [2021 SCC 25](#), at [paragraph 38](#)):

- court openness poses a serious risk to an important public interest;
-

the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

- as a matter of proportionality, the benefits of the order outweigh its negative effects.

Further, the parties themselves may enter into an agreement concerning the terms on which they may use and disseminate documents disclosed in the proceeding.

Law stated - 29 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Civil courts in Ontario have a discretionary power to order. However, the court will, in most cases, order the unsuccessful party to pay a portion of the legal costs incurred by the successful party. In this regard, an award of costs aims to compensate, to some degree, the successful party, to disincentivise frivolous proceedings and to encourage settlement.

To protect its position on costs, a party can take various steps, including serving a Rule 49 Offer to Settle and bringing a motion for security for costs, as described in more detail below.

Costs comprise two items: (1) legal fees, and (2) disbursements, such as expert fees or court filing fees.

Pursuant to Rule 57.01(1) of the Rules of Civil Procedure, in exercising its discretion to award costs, a court may consider, in addition to the result of the proceeding and any written offer to settle or to contribute to a settlement, the following factors:

- the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
- the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
- the amount claimed and the amount recovered in the proceeding;
- the apportionment of liability;
- the complexity of the proceeding;
- the importance of the issues;
- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- whether any step in the proceeding was:
 - improper, vexatious or unnecessary; or
 - taken through negligence, mistake or excessive caution;

- a party's denial of or refusal to admit anything that should have been admitted;
- whether it is appropriate to award any costs or more than one set of costs where a party,
 - commenced separate proceedings for claims that should have been made in one proceeding; or
 - in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- whether a party unreasonably objected to proceeding by telephone conference or video conference under Rule 1.08; and
- any other matter relevant to the question of costs.

Typically, a successful party is entitled to an order that the unsuccessful party pay (1) all reasonable disbursements incurred by the successful party, and (2) a portion of the successful party's legal fees. In this regard, legal fees can be awarded on a 'partial indemnity,' 'substantial indemnity' or 'full indemnity' basis.

Usually, partial indemnity involves an award of approximately 50–60 per cent of the actual fees incurred, but can be reduced further if the time incurred was unreasonably excessive. The Rules of Civil Procedure define substantial indemnity as being 1.5 times partial indemnity. As such, substantial indemnity is typically about 75–90 per cent of the actual fees incurred. Again, this can be reduced further to account for unreasonably excessive fees. As the name suggests, full indemnity represents 100 per cent of the actual fees incurred.

Substantial or full indemnity costs are rarely awarded. Substantial or full indemnity costs are typically awarded when the court wishes to express disapproval of conduct on the part of the unsuccessful party which was reprehensible, scandalous, outrageous, vexatious or in bad faith.

Substantial indemnity may also be awarded against an unsuccessful party in certain circumstances in which a successful party obtains a judgment that is more favourable to the successful party than the terms of a written settlement offer made by the successful party at least seven days prior to the hearing, which offer remained open for acceptance until the commencement of the hearing without being accepted by the unsuccessful party. The formalities required for such an offer, known as a Rule 49 Offer to Settle, are set out in Rule 49 of the Rules of Civil Procedure. The rules on costs are somewhat different in small claims court, where, typically, an award of costs will be capped at 15 per cent of the amount claimed or the value of the property sought to be recovered, plus disbursements, which, nonetheless, is subject to the court's discretion to award a greater amount in certain circumstances.

Pursuant to Rule 59.01(1) of the Rules of Civil Procedure, a civil court may order security for costs in favour of a defendant, where it appears that:

- the plaintiff is ordinarily resident outside Ontario;
- the plaintiff has another proceeding for the same relief pending in Ontario or elsewhere;
-

the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part;

- the plaintiff is a corporation or a nominal plaintiff, and there is good reason to believe that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant;
- there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant; or
- a statute entitles the defendant to security for costs.

The initial onus is on the defendant to satisfy the court that it appears there is good reason to believe that the matter comes within one of the circumstances set out above.

Once the first part of the test is satisfied, the onus is on the plaintiff to establish that an order for security would be unjust. A plaintiff can rebut the onus by either demonstrating that:

- the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation;
- the plaintiff is impecunious and that justice demands that the plaintiff be permitted to continue with the action, that is, an impecunious plaintiff will generally avoid paying security for costs if the plaintiff can establish that the claim is not plainly devoid of merit; or
- if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success.

Law stated - 29 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In civil proceedings in Ontario (although not in family law, criminal or quasi-criminal matters), lawyers may charge a contingency fee (Rule 3.6-2 of the Law Society of Ontario's Rules of Professional Conduct).

Other forms of billing arrangements such as block, fixed or flat fees for performing particular tasks are also available to parties in civil litigation matters.

Third-party funding is available in Ontario. Further, a third-party funder may take a certain share of any proceeds of the claim.

As such, third-party funding is no longer considered to be contrary to the common law doctrines of champerty and maintenance, provided that the third-party funder is not acting with an improper motive, such as a desire to stir up strife between litigants. Indeed, in both

the class action and commercial litigation context, the courts have long since recognised that litigation funding can in certain circumstances improve access to justice and permit a litigant to better manage risk.

However, depending on the circumstances, a litigation funding agreement may require court approval (for example, such approval is required at an early stage in the class proceedings context), such that the court may consider the reasonableness and lawfulness of its terms. Therefore, it is important to consider the relevant case law and the potential disposition of the court prior to entering into such an agreement.

Law stated - 29 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Civil litigants in Ontario can obtain adverse costs insurance, which typically covers payment of an opposing party's costs up to a certain amount, as well as legal expense insurance, which typically covers payment of the insured's legal fees and disbursements up to a certain amount.

In addition, various policies of insurance (eg, commercial general liability insurance or home owner's insurance) might include coverage for certain legal liabilities which, depending on the wording of the applicable policy, can include an obligation on the part of the insurer to indemnify the insured for damages that might be awarded by a court for certain covered risks, such as damage caused to a third party as a result of the negligence of the insured.

Law stated - 29 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In Ontario, class actions are permitted and are governed by the Class Proceedings Act, 1992.

A person who commences a proceeding on behalf of the members of a class is required to bring a motion for an order certifying the proceeding as a class proceeding. A certification motion may also arise in the following circumstances:

- a defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff (section 3 of the Class Proceedings Act 1992); and
- any party to a proceeding against two or more defendants may, at any stage of the proceeding, make a motion to a judge of the court for an order certifying

the proceeding as a class proceeding and appointing a representative defendant (section 4 of the Class Proceedings Act, 1992).

The court hearing the certification motion will certify a class proceeding if the following test is satisfied:

- the pleadings or notice of application must disclose a cause of action;
- there is an identifiable class of two or more persons that could be represented by the representative plaintiff or defendant;
- the claims or defences of the class members must raise common issues;
- a class proceeding would be the preferable procedure for the resolution of the common issues; and
- there is a representative plaintiff or defendant who:
 - would fairly and adequately represent the interests of the class;
 - has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding; and
 - does not have, on common issues for the class, an interest in conflict with the interests of other members.

Outside the context of class proceedings, claimants with similar claims may commence a single proceeding, provided that their claims share a factual nexus and there is no conflict between them.

In addition, when considering whether to recognise a foreign judgment granting equitable relief (ie, an order granting relief other than payment of a definite sum of money), an Ontario court will also consider the following non-exhaustive factors (*Pro Swing Inc v Elta Golf Inc*, 2006 SCC 52, at [paragraphs 30-31](#)):

- Are the terms of the order clear and specific enough to ensure that the defendant will know what is expected from them?
- Is the order limited in its scope and did the originating court retain the power to issue further orders?
- Is the enforcement the least burdensome remedy for the Canadian justice system?
- Is the Canadian litigant exposed to unforeseen obligations?
- Are any third parties affected by the order?
- Will the use of judicial resources be consistent with what would be allowed for domestic litigants?

There are certain defences available to a judgment debtor who can ask the court to refuse to recognise the foreign judgment on the basis of (1) fraud, (2) public policy or (3) lack of natural justice (*Beals v Saldanha*, 2003 SCC 72, at [paragraphs 39-75](#)).

In addition, there is a six-year limitation period applicable to the commencement of a proceeding seeking recognition of a foreign judgment in Ontario.

Law stated - 29 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In most circumstances, a party may appeal as of right or seek leave to appeal the decision of a civil court in Ontario.

However, there are certain circumstances in which there is no right to appeal or seek leave to appeal, such as a decision of the Small Claims Court concerning the payment of C\$3,500 or less.

The appeal process can be complicated and requires consideration of, among other things, whether the decision was final or interlocutory, which can determine whether an appeal would lie to:

- a judge of the civil division of the Superior Court of Justice;
- the Divisional Court; or
- the Court of Appeal for Ontario.

Ultimately, a further right of appeal or to seek leave to appeal may lie to the Supreme Court of Canada.

An appeal court will rarely permit the hearing of fresh evidence that was not part of the record of evidence in the court below.

The appeal court can be called upon to determine whether the decision of the court below was reasonable (in the case of questions of fact) or correct (in the case of questions of law). The appeal court may also be required to consider whether the decision of the court below accords with the principles of procedural fairness and natural justice.

Law stated - 29 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment can be recognised and enforced in Ontario pursuant to the common law or applicable legislation. If an order is granted recognising the foreign judgment, the foreign judgment can be enforced in the same way as an Ontario judgment.

There is a streamlined process to apply for certain foreign judgments to be recognised in Ontario under:

- the Reciprocal Enforcement of Judgments Act, which is applicable to civil judgment rendered by a court in any Canadian province or territory with the exception of Québec; and

- the Reciprocal Enforcement of Judgments (UK) Act, which is applicable to civil judgments rendered by courts in the United Kingdom.

If the above legislation does not apply – ie, if one is seeking recognition of a judgment from any other foreign jurisdiction including Québec – the judgment creditor must commence an action in Ontario seeking recognition of the judgment under the common law. Depending on the quantum of the damages awarded in the foreign judgment, this could involve commencing an action in the Small Claims Court, which has a monetary jurisdiction of no more than C\$35,000, or in the civil division of the Superior Court of Justice which has an unlimited monetary jurisdiction.

An Ontario court will recognise a foreign judgment provided it is (*Pro Swing Inc v Elta Golf Inc*, [2006 SCC 52](#), at [paragraph 10](#)):

- for a debt or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty);
- final and conclusive; and
- rendered by a court of competent jurisdiction.

In addition, when considering whether to recognise a foreign judgment granting equitable relief (ie, an order granting relief other than payment of a definite sum of money), an Ontario court will also consider the following non-exhaustive factors (*Pro Swing Inc v Elta Golf Inc*, [2006 SCC 52](#), at [paragraphs 30-31](#)):

- Are the terms of the order clear and specific enough to ensure that the defendant will know what is expected from them?
- Is the order limited in its scope and did the originating court retain the power to issue further orders?
- Is the enforcement the least burdensome remedy for the Canadian justice system?
- Is the Canadian litigant exposed to unforeseen obligations?
- Are any third parties affected by the order?
- Will the use of judicial resources be consistent with what would be allowed for domestic litigants?

There are certain defences available to a judgment debtor who can ask the court to refuse to recognise the foreign judgment on the basis of (1) fraud, (2) public policy or (3) lack of natural justice (*Beals v Saldanha*, [2003 SCC 72](#), at [paragraphs 39–75](#)).

In addition, there is a six-year limitation period applicable to the commencement of a proceeding seeking recognition of a foreign judgment in Ontario.

Law stated - 29 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

A litigant in another jurisdiction can seek the assistance of an Ontario court to obtain evidence from individuals or companies located in Ontario. To do so, a foreign litigant must obtain from the court in their jurisdiction a 'letter rogatory', which is also known as a 'letter of request' (LoR). After the foreign court has issued the LoR, the foreign litigant would commence an application in Ontario seeking an order enforcing it.

The statutory preconditions to enforcement of an LoR are:

- a foreign court has authorized the obtaining of evidence;
- the witness whose evidence is sought is within Ontario's jurisdiction;
- the evidence sought relates to a proceeding pending before the foreign court; and
- the foreign court is a court of competent jurisdiction.

The decision to grant or refuse enforcement is a discretionary one and a court may refuse to enforce a LoR even if the statutory conditions have been met.

In considering whether to grant enforcement of a LoR, the courts in Ontario will consider the principles of comity, public policy, and the absence of prejudice to the sovereignty or the citizens of Canada.

In applying these principles and making a determination, the Ontario courts consider the following six non-exclusive factors or 'guideposts':

- the evidence sought is relevant;
- the evidence sought is necessary for trial and will be adduced at trial, if admissible;
- the evidence is not otherwise obtainable;
- the order sought is not contrary to public policy;
- the documents sought are identified with reasonable specificity; and
- the order sought is not unduly burdensome, having in mind what the relevant witnesses would be required to do, and produce, were the action to be tried here.

The six factors are not rigid preconditions, and a court is not required to systematically examine each. Further, a court must not lose sight of the underlying principles, which, ultimately, requires taking a step back and balancing Canadian sovereignty considerations with the justice of the enforcement request (*Actava TV, Inc v Matvil Corp*, [2021 ONCA 105](#), at [paragraphs 50-52](#)).

Law stated - 29 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Ontario has adopted the UNCITRAL Model Law into its domestic law.

Law stated - 29 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Section 1 of Ontario's Arbitration Act defines an arbitration agreement as an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them. Subsection 5(1) states that an arbitration agreement may be an independent agreement or part of another agreement. An arbitration agreement need not be in writing, and may be an oral agreement pursuant to subsection 5(3). Pursuant to subsection 5(5), an arbitration agreement may be revoked only in accordance with the ordinary rules of contract law.

An arbitration agreement will be upheld unless the agreement is void, inoperative, incapable of being performed or conflicts with established legal principles. In *Uber Technologies v Heller*, the Supreme Court of Canada considered the question of whether to refuse to enforce an arbitration agreement on the grounds of unconscionability or public policy, or both. The Court held that the arbitration clause was unconscionable in that case, because of (among other factors) a vast inequality in bargaining power and sophistication between the parties.

Law stated - 29 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement is silent on the matter, the arbitral tribunal will be composed of one arbitrator. The arbitrator will be appointed by a court if the arbitration agreement provides no procedure for appointing the arbitral tribunal, or the person with power to appoint the arbitral tribunal has not done so after a party has given the person seven days' notice to do so, as per section 10 of the Arbitration Act. Pursuant to subsection 10(2), there are no appeals from the court's appointment of the arbitral tribunal. A party cannot revoke the appointment of an arbitration but may challenge an arbitrator only on one of the following grounds set out in subsection 13(1), namely, (1) circumstances exist that may give rise to a reasonable apprehension of bias; or (2) the arbitrator does not possess qualifications that the parties have agreed are necessary. If the party participated in the arbitrator's appointment, the party may challenge the arbitrator only for grounds for which the party was unaware at the time of the appointment (section 13(2)).

Law stated - 29 May 2025

Arbitrator options

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28 | What are the options when choosing an arbitrator or arbitrators?

There is no central listing of all arbitrators, but there several private and public lists of Ontario arbitrators. The ADR Institute of Ontario provides a directory for Ontario Dispute Resolution Professionals categorised by area of expertise, cities served, languages, occupations and services provided. In Ontario, there are a number of expert panels, including the ADR Chambers and Arbitration Place.

The pool of candidates often consists of experienced counsel, retired judges and arbitrators to meet the needs of complex arbitration such as commercial arbitration work.

Law stated - 29 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitral tribunal may determine the procedure to be followed in the arbitration in accordance with the Ontario Arbitration Act. The arbitration may be conducted on the basis of documents or a hearing with sufficient notice. The Statutory Powers Procedure Act, specifically sections 14, 15 and 16, apply to arbitration with necessary modifications as per section 21 of the Arbitration Act. The time, date and place of arbitration shall be determined in accordance with the parties' convenience and other circumstances of the case as per section 22 of the Arbitration Act. Pursuant to subsection 25(1) of the Arbitration Act, an arbitral tribunal may require that the parties submit their statements within a specified period of time.

Certain ADR panels have their own rules of procedure, such as the ADR Chambers, and the ADR Institute of Canada. Often, the agreement providing for arbitration prescribes the rules that apply and whether the arbitration will be administered by an expert ADR Chambers.

Law stated - 29 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Under section 6 of the Arbitration Act, no court shall intervene except to assist the conducting of arbitrations, to ensure that arbitrations are conducted in accordance with arbitration agreements, to prevent unequal or unfair treatment of parties to arbitration agreements or to enforce awards.

As may be noted, the section commences with a prohibition on intervention but for specific exceptions. As a practical matter, there is little jurisprudence on this section, and it is not

used frequently. Nevertheless, the exceptions are broadly described and consideration should be given section 6 where the circumstances warrant it.

Section 8 outlines powers of court. The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions as per subsection 8(1). The court may also determine any question of law that arises during the arbitration on the application of the arbitral tribunal or on a party's application if the other parties or the arbitral tribunal consent under subsection 8(2). Practically speaking, interim decisions of an arbitrator in the course of an arbitration are not subject to appeal or review.

Arbitration agreements may exclude court intervention such as appeals, and may specify the forum and governing law of an arbitration. However, arbitration agreements to do not otherwise override or oust the jurisdiction of the courts. Nevertheless, court intervention by way of review has been substantially limited by a number of decisions of the Court of Appeal. As a result, the courts are reticent to reverse a final decision of an arbitrator, except in rare circumstances. For example, an arbitrator can be wrong and will not be reversed as long as the decision is reasonable, that is, based on the evidence.

It is now certain that any challenge to an arbitrator's jurisdiction must first be heard by the arbitrator, including whether or not the parties actually agreed to arbitrate their disputes.

The most frequent interference is contemplated in an application under section 7 of the Arbitration Act to stay an action on the basis the parties have elected arbitration by prior agreement. Almost always, these applications are granted, and the action stayed. In Ontario, the courts will also now bifurcate a proceeding and require the matters subject to arbitration to go to arbitration, and the other matters alleged proceed in an action. In other words, the court will not generally assess which route makes more sense in light of the matters alleged. This may lead to the same factual matrix being heard in two different forums.

Law stated - 29 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

The arbitral tribunal may make one or more interim awards pursuant to section 41 of the Arbitration Act. Arbitrators can grant injunctive and procedural relief dealing with the parties to the arbitration. However, arbitral power to grant relief does not extend beyond the parties in an arbitration. Only courts can grant relief affecting third parties.

Law stated - 29 May 2025

Award

32 | When and in what form must the award be delivered?

Under section 38 of the Arbitration Act, an award shall be made in writing and, except in the case of an award made on consent, shall state the reasons on which it is based. The award shall be dated and indicate the place where the award is made (section 38(2)). The award shall be dated and signed by all members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included (section 38(3)). A copy of the award shall be delivered to each party (section 38(4)).

The arbitral tribunal may make an additional award to deal with a claim that was presented in the arbitration but omitted from the earlier award within 30 days (section 44(2)). The arbitral tribunal may correct typographical errors, errors of calculation and similar errors in the award, or amend the award to correct an injustice caused by an oversight on part of the arbitral tribunal within 30 days (section 44(1)).

The arbitrator also has jurisdiction to determine the costs of the arbitration, including the expense of an arbitrator, and award costs to a party.

Law stated - 29 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Grounds for an appeal may be set out in the arbitration agreement. If so, the arbitration provision with respect to rights of appeal apply. Section 45 of the Arbitration Act sets out the default criterion for an appeal: only on a question of law with leave, and only if a court is satisfied that the importance of the matter appealed justifies an appeal, and the determination will substantially affect the rights of the parties.

In other words, it is very difficult to appeal a final decision of an arbitrator. If a party wants a broader right of appeal, it must be in the arbitration agreement or provision of a contract choosing arbitration.

In addition, section 46 of the Arbitration Act lists a number of criteria in respect of which an award may be set aside by a court. No leave is required, and section 46 cannot be contracted out of in an arbitration agreement. Primarily, it protects parties from a breach of natural justice on the part of the arbitral tribunal (subsection 5), fraud, reasonable apprehension of bias, and matters of formal validity, existence of the arbitration agreement. It echoes the grounds often used in applications for judicial review in other contexts. Any other challenge to the jurisdiction of the arbitral tribunal is required to first be brought before the arbitrator for determination.

An appeal from the Superior Court's decision in an appeal of an award, an application to set aside an award, or an application for an invalidity declaration, may be made to the Court of Appeal, with leave (section 49).

Law stated - 29 May 2025

Enforcement

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34 | What procedures exist for enforcement of foreign and domestic awards?

Foreign arbitral awards are enforceable through the International Commercial Arbitration Act (ICAA), as outlined in *Costco Wholesale Corporation v TicketOps Corporation*, [2023 ONSC 573](#). The ICAA provides that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Model Law on International Commercial Arbitration have force in Ontario. The recognition and enforcement can only be refused on the limited grounds set out in article V of the ICAA and article 34(1) of the Model Law.

The Arbitration Act governs the enforcement of domestic awards. An application is generally made on notice to the appropriate court with jurisdiction over the arbitration. For domestic awards, a party may apply to the court for enforcement under section 50 of the Arbitration Act.

The International Commercial Arbitration Act, 2017, expressly adopts the New York Convention on the recognition and enforcement of foreign arbitral awards, which is appended to the Act. Accordingly, Ontario is a New York Convention jurisdiction.

Law stated - 29 May 2025

Costs

35 | Can a successful party recover its costs?

The successful party can generally recover legal costs in arbitration in full on the grounds of reasonableness, unless the arbitration clause provides for how costs will be allocated. The arbitral tribunal may award the costs of an arbitration pursuant to subsection 54(1) of the Arbitration Act. A tribunal may consider various factors such as the behaviour of the parties in relation to the efficient conduct of the arbitration or the pursuit of unfounded arguments by a party.

Absent an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration pursuant to subsection 54(4) of the Arbitration Act.

Pursuant to subsection 54(5) of the Arbitration Act, if a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favourable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

Costs may include legal fees and expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration (*Electek Power Services Inc v Greenfield Energy Centre Limited Partnership*, [2022 ONSC 2437](#) at paragraph 24).

Law stated - 29 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

ADR processes include mediation, arbitration, negotiation, conciliation and group facilitation. Mediation and arbitration are the most common means used to resolve disputes outside of courts. ADR procedures have been adopted in specialised tribunals such as Workplace Safety and Insurance Board, and the Ontario Labour Relations Board. ADR procedures have also been adopted in areas of long delays and high costs such as commercial, environmental, family, estates and employment law.

Mediation in Ontario is mandatory in three geographic jurisdictions: Toronto, Ottawa and Windsor. Mediation must occur prior to parties' ability to set a matter down for trial, and then proceed to a pretrial and trial.

Law stated - 29 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

The Law Society of Ontario Rules of Professional Conduct, specifically Rule 3.2-4, state that a lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and shall discourage the client from commencing or continuing useless legal proceedings. The commentary under the Rule goes on to state that it is important to consider the use of alternative dispute resolution and when appropriate, the lawyer should inform the client of ADR options, and if so instructed, take steps to pursue those options.

For certain disputes set out in Rule 75.1 of the Rules of Civil Procedure, mediation is mandatory, and the court can compel the parties to participate, unless there is clear reason to dispense with mediation. In certain areas of law that are governed by statutes such as labour law, there are special rules for arbitration that are statutorily mandated provisions.

The Ontario Arbitration Act does not contain any mandatory mediation provisions. In fact, an arbitrator is prohibited from mediating a matter they are arbitrating, unless the parties agree to waive section 35 of the Arbitration Act. However, parties may have to mediate if an arbitration agreement so provides as a precondition to arbitration, or may mutually agree to mediate at any time, whether in an arbitration or a court proceeding.

Law stated - 29 May 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

It is clearly the case that arbitration and med-arb dispute resolution are becoming more and more popular. This is due in part because of the significant delays and backlogs in the formal litigation system. In addition, arbitration has the added benefit of de facto case management of your dispute. It is common to be able to arrange an arbitral case conference in a short period of time. This enables process and procedural disputes to be heard and resolved or determined in real time as opposed to a motion before the courts that may take months to be heard. 'Justice delayed is justice denied' is not just a clever aphorism but in fact captures a problematic of the current civil justice system.

A creative solution to the significant delays and backlogs in the civil litigation system in Ontario is to privatise certain steps in the litigation process by retaining an arbitrator to address all procedural motions or case conferences that might be required prior to the pretrial conference and trial of the matter. This approach has the advantage of providing litigants with early access to an adjudicator, thereby significantly reducing the overall time required to resolve the dispute as well as the time required to resolve interim or procedural disputes.

Law stated - 29 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

39 | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In September 2023, Ontario's Attorney General and the Chief Justice of the Superior Court of Justice launched a Civil Rules Review to identify needed reforms of the Rules of Civil Procedure in an effort to make the system more efficient, affordable and accessible. Thereafter, a Working Group was established to conduct the Civil Rules Review. In May 2024, the Working Group released its Phase One Report, identifying potential areas of reform. Phase Two involved the creations of a 'workplan to carry out the development of detailed policy proposals for each area approved for study and development'. In April 2025, the Working Group released its Phase Two Report in which it presented its recommendations.

It should be noted that the Working Group is proposing a radical and wholesale revision of civil procedure, particularly with a view to addressing the system's significant delays and backlogs. The Proposal has considered alternative civil litigation processes adopted, for example, in the United Kingdom and Australia. The proposed reforms more closely resemble domestic arbitration than the current model represented by the existing civil rules. It posits an evidence-first process and recommends the elimination of oral discovery. If adopted, this will represent a radical realignment of the civil justice system in Ontario.

Law stated - 29 May 2025



BRAUTI THORNING^{LLP}
— BT LEGAL —

L Leslie Dizgun
Ciarán McGrath
Payam Ezzatian

ldizgun@btlegal.ca
cmcgrath@btlegal.ca
pezzatian@btlegal.ca

Brauti Thorning LLP

[Read more from this firm on Lexology](#)

Canada - Quebec

[Philippe Boisvert](#), [Dayeon Min](#), [Katia-Maria Medina](#)

[Borden Ladner Gervais LLP](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

In Quebec, various courts of first instance (ie, trial courts), such as municipal courts, the Court of Quebec, the Superior Court and the Federal Court have jurisdiction, depending on the nature of the dispute.

Various specialised administrative tribunals established under federal or provincial legislation also hear cases on specific subjects, such as the Labour Tribunal.

Municipal courts handle civil cases regarding matters assigned to them by specific acts.

The Court of Quebec consists of the Civil Division (including the Small Claims Division), the Criminal and Penal Division and the Youth Division. The Civil Division handles cases under C\$75,000, with the option for a plaintiff to file either before the Court of Quebec or the Superior Court for sums between C\$75,000 and C\$100,000 (article 35 Code of Civil Procedure (CCP)). The Court of Quebec also serves as an appellate court for specialised administrative tribunals established under provincial legislation.

The Superior Court is the court of original jurisdiction. It decides cases over C\$100,000 and handles injunctions, class actions and other extraordinary recourses (article 33 CCP). It hears divorce, bankruptcy and unassigned cases, as well as criminal and penal cases, including jury trials for serious crimes. The Superior Court is a catch-all court unless otherwise mentioned by law. It also acts as an appellate court for less serious offences, including 'evocation' cases where decisions of tribunals, public institutions, or professional corporations can be challenged (article 34 CCP).

The Federal Court of Canada shares concurrent jurisdiction with the Quebec courts in certain matters relating to federal legislation, such as IP and maritime law.

Appeals from the Superior Court or the Court of Quebec are heard by the Court of Appeal of Quebec (article 29 CCP). Appeals to the Court of Appeal of Quebec are as of right when the judgment of first instance terminates a proceeding or pertains to the personal integrity, status or capacity (article 30 CCP). Other judgments of first instance may be appealed with leave from the Court of Appeal, including when they rule on execution matters, when they confirm or quash a seizure, or when the matter at issue is one that should be submitted to the Court of Appeal because it involves a question of principle, or a new issue of law (article 30 CCP).

Judgments from the Court of Appeal of Quebec may be appealed to the Supreme Court of Canada with authorisation. The Supreme Court of Canada is Canada's last-resort national court that hears appeals from the Federal Court of Appeal, as well as each province's Court of Appeal.

Cases in the Superior Court of Quebec and the Court of Quebec are heard before single judges. The Court of Appeal usually sits in a formation of three judges for hearings on the merit, and a single judge for hearings on leave to appeal or other procedural matters, while the Supreme Court of Canada is composed of nine judges.

Law stated - 15 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The accusatorial and adversarial procedural system in Quebec requires parties to take an active role in court proceedings, making them responsible for presenting evidence that supports their positions. In contrast, the judge must remain neutral, adopting a passive and impartial stance to render a decision at the end of the trial based on the legally proven facts.

Judges of the Supreme Court of Canada, the Court of Appeal and the Superior Court of Quebec are appointed by the federal government. Eligible candidates must have at least 10 years of experience as a barrister or advocate or be current or former judges of a superior court. Judges of the Court of Quebec are appointed by the provincial government from lawyers with a minimum of 10 years of practice that have sent their application and passed the review process.

Juries are only available for some criminal cases in the province of Quebec. Typically, 150 potential jurors are randomly chosen from the electoral list. These individuals are then selected by the lawyers representing both parties. After this selection process, 12 jurors will be chosen. The use of juries in civil cases has been abolished in Quebec since 1976.

Law stated - 15 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods in Quebec are set out in the prescription rules found in Book Eight of the Civil Code of Quebec (articles 2875–2933 CCQ). Prescription is of public order and therefore cannot be derogated. In other words, it is not possible to stipulate in a contract a prescription period different from the ones established by law (article 2884 CCQ).

Generally, an action to enforce a personal or movable real right must be initiated within three years from the date the damage occurs (article 2925 CCQ). However, actions to enforce immovable real rights have a prescription period of 10 years (article 2923 CCQ). Actions to recognise and homologate a judgment, a foreign judgment or an arbitration award also have a prescription period of 10 years (article 2924 CCQ). The specific time limit varies depending on the nature of the claim, as certain actions have different limitation periods. For instance, a defamation lawsuit must be initiated within one year from the date of the alleged defamation (article 2929 CCQ). Further, cases involving damage to property against a municipality must be initiated within six months from the date the damage occurs.

A party can renounce to prescription, but not in advance. Parties may only waive time that has already elapsed in the past (article 2883 CCQ). Therefore, tolling agreements that are used in other Canadian provinces to suspend limitation periods going forward are not used

in Quebec. Prescription can also be suspended by the parties by mutual agreement for a maximum duration of six months without requiring court authorisation (article 7 CCP). Finally, prescription may be interrupted civilly or naturally (article 2889 CCQ).

Law stated - 15 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Before initiating legal proceedings in Quebec, parties should consider various pre-action steps to prepare for litigation and potentially resolve disputes outside of court. While Quebec does not have formal pre-action protocols found in other jurisdictions, parties can engage in negotiations, send demand letters, exchange documents and seek legal advice to assess their claims and explore settlement options. It is also required that a party put the other party formally on notice of its default before the institution of judicial proceedings, either by a letter of demand, or by other means provided by law (article 1594 CCQ).

Additionally, parties may seek alternative dispute resolution (ADR) methods, such as mediation or arbitration (articles 6–7 CCP). ADR methods can offer a collaborative and flexible approach to resolving disputes, often leading to quicker and more cost-effective outcomes than litigation.

Law stated - 15 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings in Quebec are typically commenced by the filing of an originating application with the appropriate court (article 100 CCP). The plaintiff must submit the necessary documents, including the claim or application, to the court (article 107 CCP). These documents need to be communicated to the defendant. This notification usually involves the delivery of the claim through a bailiff (article 140 CCP), ensuring that the defendant is informed of the commencement of the proceedings and provided with the necessary information to respond to the claim.

Regarding the courts' capacity to handle their caseload, like many other jurisdictions, Quebec's judicial system currently faces challenges related to caseload management and delays in listing disputes for trial. Currently, a party may wait up to a year before having their case scheduled for a hearing on the merits.

In Quebec, courts may charge a fee for starting proceedings or issuing a claim, known as a court filing fee. These fees vary depending on the nature of the claim and the court in which it is filed. Court filing fees are intended to cover the administrative costs associated with

processing and managing civil proceedings. However, certain individuals may be eligible for fee waivers or exemptions based on their financial circumstances. It is essential for parties to be aware of the applicable filing fees when initiating civil proceedings in Quebec. Such judicial fees may be claimed by the successful party against the other party.

Law stated - 15 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

In Quebec, the process for a civil claim follows a structured sequence with specific documents and deadlines that is specified in the CCP. It typically starts with the plaintiff filing an originating application outlining the facts, legal basis and desired remedy (article 100 CCP). After filing, the plaintiff must serve the original application by bailiff to the defendant (article 107 CCP). The defendant then responds with an answer and then by a defence stating its position and potentially raising counterclaims. The defendant has 15 days to respond to the original application (article 145 CCP).

The timetable for a civil claim is then established via a 'case protocol' within 45 days from the service of the originating application (articles 148 to 149 CCP). The case protocol is a formal agreement between parties involved in a legal dispute, outlining various aspects of the proceedings. It requires cooperation to reach a settlement or establish the protocol itself. The protocol covers agreements, undertakings and disputed issues, as well as considering private dispute resolution processes. It also outlines steps for orderly proceeding conduct, estimates time and legal costs, and sets trial readiness deadlines. Key aspects include preliminary exceptions, settlement conferences, examinations, expert opinions, defence procedures, incidental applications, trial readiness extensions and notification methods. In complex cases, parties may agree on a complementary protocol for unresolved points. Timelines can vary based on case complexity, court schedules and procedural factors.

Case management hearings can be held to iron out details of the timeline and debate mainly procedural issues (articles 153–160 CCP).

Pretrial settlement conferences that are supervised by a judge may be scheduled to discuss a settlement and potentially homologate the transaction concluded between the parties (articles 161–165 CCP).

If the case is not settled by the parties, the legal action is scheduled for trial (articles 173–174 CCP) where evidence and legal arguments will be presented. Pretrial conferences are held in order to clarify some issues and streamline the trial process (article 179 CCP). In the event that the defendant does not present a defence or did not answer the summons, a judgment by default will be pronounced against the defendant (article 180 CCP).

Finally, a judgment is rendered by the judge (article 321 CCP), outlining the court's decision and any remedies.

Law stated - 15 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Under the rules of the CCP pertaining to the courts' competence *rationae personae*, the decision of the plaintiff to bring the case before a particular judicial district within Quebec may be challenged, and sometimes even modified, either at the request of a party or by the judge's own initiative. Article 48 CCP allows the judge to order the transfer of a case to another judicial district.

Under the Quebec regime pertaining to private international law, for a Quebec court to have subject-matter jurisdiction over a matter, the suit must have real and substantial connection with the province of Quebec as specified in article 3148 CCQ. The factors used to assess whether there is a connection with the defendant, include the domicile, whether the contract was concluded in Quebec, or if the fault occurred or the prejudice was suffered in Quebec (articles 3134, 3141, 3142, 3148 CCQ). The plaintiff has the burden to establish this connection.

Québec courts can also have jurisdiction through forum selection clauses in contracts, as long as these are not subject to legislative exceptions, such as in the case of employment or consumer contracts.

Further, claims arising from contracts subject to an arbitration agreement cannot in principle be brought before the courts. A party may apply for the Court to decline its jurisdiction and refer the matter to arbitration (622 CCP).

Once jurisdiction is established, the defendant can ask the court to refuse to exercise its competence by invoking the principle of *forum non conveniens*, according to which another jurisdiction is better suited to hear the suit. The doctrine of *lis pendens* further allows the Quebec court to stay its decision pending the outcome of the request by foreign courts and Quebec courts (3137 CCQ).

A party may also apply to order the other party to refrain from commencing or taking any further steps in the proceedings in another jurisdiction (anti-suit injunction). To obtain such an injunction, the first stage of the analysis is to determine whether there is another forum that is clearly more appropriate than the domestic forum. At the second stage of the analysis, a court must not grant an anti-suit injunction if it will deprive the plaintiff of advantages in the foreign forum of which it would be unjust to deprive him.

Law stated - 15 May 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

In Quebec, parties have some control over the procedure and timetable within the bounds of procedural rules and court orders, subject to the approval of the court. Generally, there

is a six-month time limit for scheduling a case for trial and judgment (article 173 CCP). However, parties have the option to request an extension of this deadline by filing a motion.

Additionally, they can participate in case management conferences, during which procedural issues can be discussed with the judge. Parties may also submit joint requests to propose procedural changes or extensions, though these also require court approval. Cooperation and negotiation between parties can help streamline the process and potentially expedite proceedings (article 19 CCP). However, any significant procedural changes or time limit extensions must ultimately be sanctioned by the court, which considers factors such as the reason for the request and fairness.

Law stated - 15 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is a duty to preserve documents and other evidence pending trial in Quebec (articles 20 and 253 CCP). This duty, known as the duty of preservation, requires parties to take reasonable steps to ensure that relevant documents and evidence are preserved and not destroyed, altered or tampered with once litigation is reasonably anticipated or commenced.

Failure to preserve evidence or disclose relevant documents can have serious consequences, including adverse inferences or sanctions imposed by the court.

Parties must disclose all relevant documents in a timely and transparent manner to avoid any potential repercussions during the litigation process. Limitations on the extent of the discovery can be imposed based on relevance, privilege or legitimate interests.

Law stated - 15 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Under Quebec law, certain documents may be privileged and therefore not required to be disclosed to the other party during litigation, unless the privilege is waived, or if the documents are ordered to be communicated by a court.

Privileged documents are those that are protected from disclosure due to their confidential or sensitive nature. They include communications between a client and their lawyer for the purpose of seeking or providing legal advice, which are typically privileged (article 284 CCP). This encompasses correspondence, memoranda and other documents exchanged between a lawyer and their client. Additionally, documents prepared for the dominant purpose of litigation, such as internal legal memoranda and case strategy discussions, are also privileged and do not need to be disclosed. Privilege extends to both external lawyers

and in-house lawyers, whether they are local or foreign. However, that privilege may not apply if the communication does not involve seeking or providing legal advice, such as purely business-related discussions.

Law stated - 15 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Parties may exchange written evidence from witnesses and experts prior to trial, particularly during the discovery phase of litigation. The process of exchanging written evidence, including witness statements and expert reports, allows each party to understand the evidence that will be presented by the other side and to prepare their case accordingly.

During the discovery phase, parties may request the production of documents and information from each other, known as undertakings. In Quebec, discovery primarily takes place through pretrial examinations. This exchange of documents helps both parties assess the strengths and weaknesses of their case, identify potential issues and evaluate the credibility and reliability of witnesses. While the specific procedures for exchanging written evidence may vary depending on the nature of the case and the court's rules, parties are generally required to disclose relevant documents and information in their possession, custody, or control, subject to any applicable privileges or confidentiality protections.

If a party intends to use an expert report during a trial, which is usually announced in the case protocol, they must share the report with all parties before the case is scheduled for trial. Typically, there are no pretrial examinations of experts in Quebec civil procedure.

Law stated - 15 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In Quebec, evidence is typically presented at trial through witness testimony and the submission of documents. Relevant witnesses may be called to testify orally in court. They are examined by the party who called them and then subject to cross-examination by the opposing party's lawyer.

Under article 293 CCP, the expert's report replaces their oral testimony, with exceptions. To be introduced into evidence, the expert report must be filed before a matter is set down for trial. A party may request the expert to testify to clarify points addressed in the report. This request can be made before the hearing if the parties agree, without altering the deadline for preparing the case file. Additionally, a party may question the expert about new findings discovered during the investigation. Any other examination of the expert must be authorised by the court under article 294 CCP.

Cross-examination of an expert appointed by another party is permitted. However, any request for examination or cross-examination must be justified to avoid sanctions under the law.

Law stated - 15 May 2025

Interim remedies

13 | What interim remedies are available?

In Quebec civil law, interim remedies are mainly provided for in the CCP. Interim remedies are, by definition, transitional, temporary measures. They apply for the duration of the proceedings, pending a decision or settlement.

There are several interim remedies for injunctive relief and safeguard orders, including interlocutory and provisional injunctions, as well as Anton Piller, Mareva and Norwich-type injunctions. The Superior Court of Quebec has the exclusive power to order injunctions (article 33 CCP).

Injunctions (articles 509–515 CCP)

An injunction is an order directing a person to refrain from or to cease doing something or to perform a specified act. In other words, this is the general remedy for obtaining a court order at short notice, in order to preserve rights, that can apply to a wide variety of factual situations. This is a discretionary and exceptional measure. Injunctions can be categorised into three types: provisional, interlocutory and permanent.

- An *Anton Piller* injunction is an interlocutory-type injunction that orders the defendant to allow the plaintiff to inspect premises and hand over certain evidence, under penalty of contempt of court.
- A *Mareva* injunction is also known as a ‘freezing order’. It prevents the defendant from disposing of their assets anywhere in the world. This order can be issued if there is a legal dispute between the plaintiff and the defendant that falls under the jurisdiction of the court where the order is being requested.
- A *Norwich* injunction is a type of court order that requires a third party to provide information or documents about a specific person. It is a way to gather information, even before a formal legal case has begun.
- A safeguard order is an exceptional measure akin to a provisional interlocutory order, and judges have the discretionary power to decide whether to issue it (article 49 CCP). It is also of limited duration and is intended to temporarily restore the balance between the opposing interests of the parties and to minimise the alleged violations.
- A protection order (article 509(2) CCP) is a specific type of injunction issued to direct a natural person to refrain from or cease doing something or to perform a specified act to protect another natural person whose life, health or safety is threatened. These orders cannot exceed three years and can be issued in cases of domestic violence, or to prevent a loved one from interfering with the administration of care.

Seizure before judgment (articles 516–523 CCP)

The purpose of a seizure before judgment is to place property or assets located in Quebec in the hands of justice while a proceeding is pending, as a conservatory measure. This type of action is typically aimed at preserving assets that could be used to satisfy a future judgment if the plaintiff prevails in the lawsuit. In other words, it is a legal action where a court authorises the seizure of the defendant's property before a final judgment has been rendered.

Sequestration (articles 524–526 CCP; articles 2305-2311 CCQ)

Sequestration places a disputed property in the hands of a neutral third party who returns it only to the party entitled to it, once the dispute is over (article 2305 CCQ). This can involve immovable and movable property (article 2306 CCQ). The purpose of sequestration is to maintain the status quo to preserve the rights of both (or more) parties. The court may order the sequestration of disputed property on its own initiative if it considers it necessary to preserve the parties' rights in the property.

Law stated - 15 May 2025

Remedies

14 | What substantive remedies are available?

Other than a judgment ordering a party to pay damages, a court may issue a permanent injunction ordering a party to do or not to do something, or a declaratory judgment determining the status of the plaintiff, or a right, power or obligation conferred on the plaintiff by a juridical act (article 142 CCP).

Punitive damages have a preventive purpose under the CCQ and are only available where the law specifically provides for punitive damages (article 1621 CCQ). Punitive damages may be awarded, for instance, for violations of the Quebec Charter of Human Rights and Freedoms, violations under the Consumer Protection Act and, in exceptional circumstances, where the defendant has acted fraudulently or intentionally and reprehensibly violated its contractual obligations. When evaluating whether to order punitive damages, the court must consider (1) the gravity of the fault (2) the economic situation of the party against whom it is ordered (3) how the plaintiff was compensated for the defendant's fault and (4) whether the reparation for the damages caused is taken in charge by a third party. The amount of punitive damages may not exceed what is sufficient to fulfil its preventive purpose.

If the defendant is condemned to pay damages, interest will apply under articles 1617 and 1619 CCQ from the date of default or from any other later date that the court considers appropriate (article 1618 CCQ).

Law stated - 15 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

There are no rules governing the settlement process. Case law dictate that the parties can keep settlement discussions confidential from the court, as such communication is privileged. The only element that the court requires should the case settle is that the parties file a notice of settlement with the court as soon as possible (article 220 CCP). Therefore, the signed settlement agreement is usually not filed with the court. It bears mentioning that a settlement agreement usually constitutes a transaction under the law (article 2631 CCQ).

If the settlement is not respected, the party can enforce the settlement by homologating it by the court, which will have the same force as a judgment of the court. The applicant can therefore obtain the assistance of the court to obtain its execution (articles 2631 and 2633(2) CCQ). In that case, the settlement agreement is filed within the court record and will be made public.

Law stated - 15 May 2025

Enforcement

- 16** | What means of enforcement are available?

Post-trial monetary award may be executed by bailiff with a notice of execution if the only execution measure is seizure (article 566 CCP). Procedures also exist to allow the judgment creditor to take possession of the property they have been declared the owner of and to be registered as the owner of said property. Alternatively, the inscription of a legal hypothec resulting from a judgment on a movable or immovable property may be enforceable to ensure payment of monetary awards (article 2730 CCQ).

If the parties violate an order from a court, they can be held in contempt of court and fined (articles 57–62 CCP). The sanctions for contempt of court include fines and community service. Individuals can be fined up to C\$10,000, while legal entities, partnerships, associations or other groups can be fined up to C\$100,000, with fines enforced under Chapter XIII of the Code of Penal Procedure. Additionally, if someone refuses to comply with a court order or injunction, the court can impose imprisonment. The person must periodically appear before the court to explain themselves, and imprisonment can be repeated until they comply, but it cannot exceed one year.

Law stated - 15 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Yes, in Quebec court hearings are generally public (article 11 CCP). Attendees must behave respectfully during hearings, and only journalists may make sound recordings, provided the court does not prohibit it. Image recordings are not permitted, and all parties must exercise restraint out of respect for the judicial process (article 14 CCP). Anything filed within the court is available to the public and the only current way for the public to obtain access to the file is to go physically to the appropriate courthouse. However, access to court records is restricted in family matters and certain health-related cases. Only authorised individuals, such as parties, their representatives, lawyers, notaries and journalists with a legitimate interest, may access these documents under court-determined conditions. In adoption matters, access is further restricted and requires court authorisation (article 16 CCP).

However, hearings can be held in private (*in camera*) if public order, the dignity of the persons involved, or the protection of substantial and legitimate interests require it. This includes prohibiting or restricting access to certain documents or the disclosure of specific information (article 12 CCP). Certain individuals, such as lawyers, notaries, their articling students, journalists and those deemed capable of assisting the concerned person, may attend in camera hearings. However, the court may exclude these individuals to prevent serious prejudice (article 13 CCP).

Certain matters, notably under of family law or criminal law, such as family issues, medical authorisations, confinement, or changes in a minor's sex designation, are held *in camera*. The court may allow public hearings if it serves justice, but information that identifies the involved parties or children must not be disclosed without authorisation (article 15 CCP).

Law stated - 15 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

If the plaintiff is from outside Quebec, the defendant may request that the plaintiff provide a surety as security for the estimated legal costs the defendant would incur if the court rules against the plaintiff (article 492 CCP).

After the judgment has been rendered, the successful party may be entitled to reimbursement of their legal costs (article 339 CCP and following). It is important to note that legal costs are defined as all necessary court costs and fees for the preparation, notification and presentation of a case in court, including expert fees. Legal costs do not include attorney fees. However, when a party acts abusively or unreasonably, they may be ordered to pay the extrajudicial fees of the other party, such as attorney fees. However, for a party to obtain payment of their extrajudicial fees, they must demonstrate that the opposing party abused their right to litigate and proving an abuse of rights is a heavy burden. Simply having a weak legal claim or misjudging one's chances of success does not constitute an abuse of rights.

The court may, however, decide otherwise, such as reducing or refusing to award legal costs. In most cases, the payment of legal costs is made without the intervention of the court.

Law stated - 15 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In Quebec, private agreements for covering lawsuit expenses, including contingency and conditional fee arrangements, are generally allowed. The percentage contract is one of the three methods of remuneration for lawyers recognised by the Quebec Bar and case law, except under certain conditions. Such agreements are commonplace in class actions (*Walid c. Compagnie Nationale Royal Air Maroc*, 2024 QCCS 2674 at paragraphs 74-80).).

In general, third-party funding agreements are deemed acceptable and should be approved, provided they adhere to certain principles:

- the agreement must be necessary to grant the plaintiff access to justice;
- the plaintiff's authority over the litigation should not be undermined by the funding agreement;
- the agreement should not jeopardise the lawyer-client relationship or the lawyer's obligations of loyalty and confidentiality;
- the compensation received by the third-party funder must be fair and reasonable; and
- the third-party funder must commit to maintaining the confidentiality of any privileged or confidential information;

Law stated - 15 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Insurance that covers legal costs is available for parties with a liability insurance policy at the time of the dispute and where the insurer's obligation to defend was triggered. However, private insurance specifically designed to cover all legal expenses is not widely used in Quebec.

Law stated - 15 May 2025

Class action

- 21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The class action procedure in Quebec is governed by a dedicated section the CCP at articles 571 CCP and following. Class actions entail two steps: the authorisation stage and the trial on the merits.

The authorisation stage

First, a person seeking to initiate a class action must obtain prior authorisation from the court (article 574 CCP). The authorisation process aims to screen frivolous or inappropriate claims for class action proceedings. Therefore, the authorisation judge does not make definitive findings on the merits of the proposed class action at this preliminary stage. Instead, they must only examine whether the following criteria outlined in article 575 CCP are met:

- (1) the claims of the members of the class raise identical, similar or related issues of law or fact;*
- (2) the facts alleged appear to justify the conclusions sought;*
- (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and*
- (4) the class member appointed as representative plaintiff is in a position to properly represent the class members.*

The burden rests on the applicant of a class action to demonstrate that these criteria are fulfilled. Quebec courts have established a low threshold to meet each criterion, and any doubt regarding whether a criterion is met is typically decided in favour of the applicant. Case law advocates for a flexible, liberal and generous interpretation of the criteria for authorising a class action. It has become increasingly difficult for defendants to successfully dismiss a class action at the authorisation phase.

The trial on the merits

Second, if the proposed class action is authorised by the court, the applicant may file an originating application for the class action. This application addresses the merits of the case and evaluates whether, based on the facts and the law, the defendants are liable for damages.

Law stated - 15 May 2025

Appeal

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22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The right to appeal is established by law, and it is essential to refer to the applicable legislation at the time of the proceedings to ascertain whether a judgment is subject to appeal. To initiate an appeal before the Court of Appeal, the appellant must have a right to appeal as defined in article 351 CCP.

An appeal can be either as of right, which is initiated by filing a notice of appeal (article 353 CCP), or by permission, which requires the filing of both a leave to appeal and a notice of appeal (article 357 CCP). In both instances, the appellant must serve the notice of appeal or leave to appeal to the adverse party or their attorney and file it within 30 days of the notice of judgment pursuant to article 360 CCP. A validly filed appeal suspends the execution of the judgment (article 355 CCP).

Appeals as of right encompass judgments from the Superior Court and the Court of Quebec that conclude a proceeding or pertain to specific matters such as personal integrity, status, or contempt of court (article 30 (1) CCP). These judgments can be appealed without the need for permission from the Court of Appeal.

However, certain judgments require seeking leave to appeal. This includes judgments with a subject matter value below C\$60,000, judgments rendered through non-contentious proceedings and other specified scenarios (article 30 (2) CCP). The Court of Appeal will also request a leave to appeal if it concerns a question of principle, a new issue or an issue of law that has given rise to conflict judicial questions (article 30 (3) CCP). Further, judgments made during proceedings that disallow evidence objections may also require leave to appeal if they determine a portion of the dispute or cause significant harm to a party (article 31 CCP). Additionally, while case management measures and rulings on procedural matters typically cannot be appealed, permission may be granted if they appear unreasonable in light of procedural principles (article 32 CCP).

A judgment from the Court of Appeal is enforceable notwithstanding an application for leave to appeal to the Supreme Court of Canada. Parties can request the Court of Appeal's authorisation to amend or correct their appeal procedures. Additionally, upon request, a judge of the Court of Appeal may order the appellant to provide security to cover the appeal costs and any potential confirmation of the judgment.

An appeal will be dismissed if the judgment is legally sound or lacks any manifest and predominant errors. Moreover, under article 365 (1) CCP, the Court of Appeal may summarily dismiss an appeal that is evidently frivolous or dilatory, requiring indicators of bad faith or temerity to establish abuse.

The Court of Appeal may allow parties to present new evidence if it demonstrates its novelty, indispensability, exceptional circumstances, necessity for justice and potential to lead to a different judgment.

Law stated - 15 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Judgments rendered outside of Quebec are considered foreign judgments. Unlike other common law provinces in Canada, Quebec does not have an act relating to the reciprocal enforcement of judgements from other provinces.

Decisions made by foreign authorities are generally presumed valid, but there are exceptions to this rule. When asserting a right based on a foreign decision, the burden of proof lies with the party making the claim, requiring them to provide substantial evidence.

Procedurally, foreign judgments to seek recognition and execution are introduced via an originating application (article 507 CCP) or in some cases, by an application in the course of proceedings. The foreign judgment is attached along with a certificate from a competent foreign public official stating that the decision is no longer appealable in the state in which it was rendered or that it is final or enforceable (article 508 (1) CCP). Other conditions apply if the foreign judgment was rendered by default (see articles 508 (2) CCP; article 3156 CCQ).

Quebec courts do not consider the merits of the foreign judgment but confine themselves to verifying whether the necessary conditions for enforcement are met (see articles 3155 and 3158 CCQ). If the foreign judgment is recognised, the party seeking its execution has 10 years to seek its execution.

Law stated - 15 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In Quebec, a foreign party or authority may apply to the court for execution of a rogatory commission. A letter rogatory, or rogatory commission, is a legal tool through which a court in one jurisdiction seeks assistance from a court in another jurisdiction for evidence gathering in ongoing legal proceedings.

The criteria that should guide the court in exercising its discretion to grant the holding of this commission are:

- the requested evidence is relevant;
- the requested evidence is necessary for the outcome of the litigation;
- the evidence cannot be obtained in another way;
- the requested documents are reasonably specifically identified; or
- the request is not unduly burdensome.

The court may appoint a commissioner to examine a witness or gather evidence if none is designated in the commission. The same rules apply if the application is presented by a commission of inquiry established by the Governor General in Council or a Lieutenant Governor in Council (article 504 CCP).

The execution of the rogatory commission follows the rules of the CCP unless the foreign authority requests a different procedure. Regardless, the foreign authority must undertake

to guarantee the payment of costs. The party applying for execution informs the foreign authority of the proceedings' time and location (article 505 CCP).

Finally, documents attesting to the execution or refusal of the rogatory commission are sent to the foreign authority through the same channels used to send the application for execution (article 506 CCP).

Law stated - 15 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Yes, arbitration law in Quebec is set out in articles 620 to 655 of the Code of Civil Procedure (CCP), which integrate the principles of the UNCITRAL Model law. Articles 2638 to 2643 of the CCQ also govern arbitration agreements. Quebec arbitration law was reformed in 1986 to implement the principles of the UNCITRAL Model law shortly after it was issued.

Unlike other Canadian provinces, Quebec arbitration law does not distinguish between domestic and international arbitration, such that the principles of the UNCITRAL Model Law apply to all arbitrations seated in Quebec. Articles 649–651 CCP set out a few rules that apply specifically to international arbitrations (which, in Quebec, also means inter-provincial arbitrations). Notably, article 649 CCP provides that the rules of the CCP are to be interpreted in conformity with the UNCITRAL Model law and its *Travaux préparatoires*.

Law stated - 15 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing pursuant to article 2640 CCQ. The arbitration agreement does not need to be included in a contract and can be contained in an exchange of communications or of proceedings in which its existence is alleged by one party not contested by the other. There are no formal requirements beyond this.

Article 2638 CCQ defines an arbitration agreement as 'a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts'.

Law stated - 15 May 2025

Choice of arbitrator

27 |

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Parties are free to agree on a single arbitrator or a panel of three arbitrators. If the arbitration agreement is silent, the default number of arbitrators is one (article 624 CCP). If there is only one arbitrator, the parties will appoint the arbitrator by mutual agreement, unless they ask a third party to make the appointment. If there are three arbitrators, each party appoints one arbitrator, and the two chosen arbitrators appoint the third.

If a party fails to appoint an arbitrator within 30 days, or if the appointment of the arbitrator proves difficult, the other party may request that the court make the appointment (article 625 CCP).

Arbitrators may be recused if there are serious reasons to question their impartiality or if the arbitrator does not have the qualifications agreed by the parties (article 626 CCP). A party can only seek to recuse the arbitrator that it has appointed for a cause that arose or was discovered after the appointment was made.

Applications for recusation are made to the arbitrator concerned within 15 days of becoming aware of the appointment or the cause for recusation. If a recusation cannot be obtained in this way, a party may ask the court to rule on the recusation (article 627 CCP).

Law stated - 15 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Parties are free to choose any arbitrator with suitable qualifications and experience for their disputes. The pool of arbitrators in Quebec is made in part of former judges of the Quebec Superior Court or the Quebec Court of Appeal and in part of prominent arbitration practitioners.

Law stated - 15 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to choose the procedural rules governing the arbitration. Arbitrators are required to conduct the arbitration proceedings in conformity with the adversarial principle and the principle of proportionality (article 632 CCP).

Law stated - 15 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Courts can intervene upon request to appoint an arbitrator if the parties cannot agree (article 625 CCP) and to recuse (articles 626–627 CCP) or revoke (article 628 CCP) arbitrators.

An arbitrator or a party, with leave of the arbitrator, may also request the assistance of the court to obtain evidence, such as compelling a witness to attend, answer, or produce evidence in their possession (article 634 CCP).

In addition, courts can, upon request of one of the parties, rule on an arbitrator's jurisdiction within 30 days of an arbitrator's jurisdictional ruling (article 632 CCP).

Law stated - 15 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes, arbitrators may grant interim relief in Quebec. Article 638 CCP specifically empowers arbitrators to grant any provisional measure to safeguard the parties' rights. Arbitrators may even, for urgent matters, order interim relief before the request for interim relief is notified to the other party, for a maximum duration of 20 days (article 639 CCP).

Law stated - 15 May 2025

Award

32 | When and in what form must the award be delivered?

The arbitral award must be issued in writing and be signed by the arbitrators. Awards must be reasoned and must include the date and the place where it was made. The award must be issued within three months after the matter is taken under advisement, but the parties may agree to extend this time limit (article 642 CCP).

Law stated - 15 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Unlike in other Canadian provinces, neither domestic nor international arbitral awards may be appealed in Quebec. Courts 'cannot review the merits of the dispute' (article 645 CCP).

Arbitral awards may only be challenged on narrow grounds by resisting homologation or by way of an application for annulment (article 648 CCP). The grounds for annulment are the same narrow grounds as those provided in article V of the New York Convention and article 34 of the Model Law. They are set out at article 646 CCP. An application for the annulment of an award must be made with three months of receipt of the arbitral award.

Parties may also seek the rectification of an award before the arbitral tribunal within 30 days of receiving the award, to correct any clerical error or ask for a supplemental award on a part of the dispute omitted by the award (643 CCP).

Law stated - 15 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Canada (and consequently Quebec) is a party to the New York Convention. Domestic awards can be homologated by the Quebec courts (article 645 CCP), thereby acquiring the force and effect of a judgment of the court. The rules governing the enforcement of arbitral awards made outside Quebec are set out in articles 652–655 CCP. Foreign awards recognised in Quebec have the same force and effect as a judgment of the court.

Law stated - 15 May 2025

Costs

35 | Can a successful party recover its costs?

Parties are free to provide in their arbitration agreements or case protocol how costs will be attributed. In the absence of agreement, article 637 CCP provides that parties are equally liable for the fees and expenses of the arbitrator unless the arbitrator decides otherwise.

Law stated - 15 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

In Quebec, various alternative dispute resolution (ADR) processes are commonly used to resolve conflicts outside of the traditional court system. 2016 amendments to the Code of Civil Procedure (CCP) gave a prominent role to ADR. The first article of the CCP states the following:

1. To prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.

The main private dispute prevention and resolution processes are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them. The parties may also resort to any other process that suits them and that they consider appropriate, whether or not it borrows from negotiation, mediation or arbitration.

Parties must consider private prevention and resolution processes before referring their dispute to the courts.

Three processes are most often used in the province: mediation, settlement conference and arbitration, among others.

Mediation

Mediation in Quebec involves a neutral third party, known as the mediator, who assists the parties in reaching a mutually acceptable resolution. The mediator facilitates communication between the parties and helps them explore potential solutions to their dispute. The mediation process in family matters is notably outlined in articles 417 CCP and following, otherwise articles 605–619 CCP may also be applicable.

Arbitration

Arbitration is a more formal ADR process where the parties agree to submit their dispute to an arbitrator or panel of arbitrators. The arbitrator or arbitrators hear evidence and arguments from both sides and then make a binding decision to resolve the dispute. Arbitration offers a faster and less expensive alternative to litigation while still providing a final and enforceable outcome. Arbitration rules can be supplemented by articles 620 CCP and following.

Settlement conference

A settlement conference is a form of ADR that combines negotiation and mediation, but instead of the neutral third party being a mediator, it is a judge. The goal of a settlement conference is to facilitate negotiation in order to see if a solution would be possible (see article 161–165 CCP).

Law stated - 15 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no strict obligation for parties to engage in ADR, as it remains a voluntary process, but they must 'consider' it (article 1 CCP). For instance, parties must indicate in the case protocol if they have considered resorting to private modes of dispute resolution. This obligation primarily falls on lawyers, who are expected to suggest ADR options to their clients during initial consultations.

While courts cannot force parties to participate in ADR, the CCP states that facilitating conciliation is part of this mission. Accordingly, judges can preside over settlement conference (article 161 CCP).

Law stated - 15 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Quebec is the only civil law jurisdiction in Canada, which means that the general laws governing persons, property, obligations, private international law and evidence are all codified in the Civil Code of Quebec. All of its rules of civil procedure are codified in the Code of Civil of Procedure.

It should also be noted that Quebec is the only province in Canada where the official language is French. In 2022, the legislator strengthened the Charter of the French Language with the new Act respecting French, the official and common language of Quebec (also commonly known as Bill 96). The new Act provides, for instance, that any judgment putting an end to the proceedings that is written in English must be accompanied with a French translation. While the new Act also put in place the requirement that any legal proceedings instituted by a legal person in English must be accompanied with a certified French translation, the application of the law was suspended following a decision of the Superior Court of Quebec (see *Mitchell v Procureur général du Québec*, 2022 QCCS 2983).

Law stated - 15 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In *Republic of India v CDDM Holdings*, 2024 QCCA 1620, the Quebec Court of Appeal considered Canadian state immunity law in the context of the enforcement of treaty awards against States and State-owned entities. The court held that India is not immune from the Canadian courts' jurisdiction in enforcement proceedings of arbitral awards rendered against India following an investor-state arbitration under a bilateral investment treaty.



The court found that India had expressly waived its jurisdictional immunity by agreeing to arbitrate under the India-Mauritius BIT and by ratifying the New York Convention, thus satisfying Canada's *State Immunity Act* (SIA) waiver exception. In the same judgment, the Court of Appeal also found that whereas the Devas investors fulfilled the criteria for a seizure before judgment under the Civil Code of Procedure of Quebec, nothing in the SIA prevented Quebec courts from authorising an *ex parte* pre-judgment attachment against sovereign assets.

Law stated - 15 May 2025



Philippe Boisvert
Dayeon Min
Katia-Maria Medina

PBoisvert@blg.com
DMin@blg.com
KMedina@blg.com

Borden Ladner Gervais LLP

[Read more from this firm on Lexology](#)

China

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LITIGATION

Court system

1 | What is the structure of the civil court system?

In China, the people's courts are judicial organs exercising judicial power on behalf of the state. In accordance with the Organic Law of the People's Courts, the people's courts are divided into:

- the Supreme People's Court;
- local people's courts at various levels; and
- specialised people's courts.

Local people's courts at various levels are divided into high people's courts, intermediate people's courts and primary people's courts. Specialised courts in China currently include military courts, railway transportation courts, maritime courts, financial courts, intellectual property courts and internet courts.

China implements a court system characterised by four levels and two instances of trials.

'Four levels' refers to the four levels of courts divided based on their descending order of power, namely:

- the Supreme People's Court, located in Beijing, the premier appellate forum and court of last resort, which mostly hears cross-provincial cases;
- high people's courts, mostly at the level of provinces, autonomous regions and special municipalities;
- intermediate people's courts, mostly at the level of prefectures and municipalities; and
- primary people's courts, at level of autonomous counties, towns and municipal districts.

'Two instances of trials' means that each case has, at most, two trials. Once the litigants challenge the judgment of first instance made by a local court, they can appeal the case to the next higher level court only once. Once an appeal is filed, the appeal court must hear the case. The judges shall hear and give their determination on both fact-finding and law application.

The subject matter, nature or size of the claim will decide which level of court such claim shall be brought to for the first instance trial. In general, the primary people's court hears cases at first instance, unless the law provides otherwise. While an intermediate people's court shall have jurisdiction as a court of first instance over the following types of civil cases:

- major foreign related cases;
- cases with significant impact in the areas over which the courts exercise jurisdiction; and
- cases determined by the Supreme People's Court to come under the jurisdiction of the intermediate people's courts.

A high people's court shall have jurisdiction as a court of first instance over civil cases with significant impact in the areas over which they exercise jurisdiction.

The Supreme People's Court shall have jurisdiction as the court of first instance over the following types of civil cases:

- cases with significant impact on the whole country; and
- cases that the Supreme People's Court deems it should try by itself.

Law stated - 15 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In China, an inquisitorial system is adopted in the judicial system whereby the judges take dominant roles in trials and are actively involved in fact-finding by questioning the parties, advocates of the parties and witnesses. This is in contrast to the adversarial system adopted by most common law countries where the fact-finding process is controlled by the parties, and the judge or jury remains neutral and passive throughout the proceeding.

There is no jury system in China. However, people's jurors – ordinary citizens – may participate in first instance civil trials through collegial panels. There are two main trial procedures:

- Summary procedure: applied in grassroots courts, usually conducted by a single judge.
- Ordinary procedure: typically handled by a three-member panel comprising one presiding judge and two adjudicators, who may be either judges or people's jurors.

In cases involving significant public interest or broad social impact, a seven-member panel may be formed, including three professional judges and four people's jurors. In such panels, jurors vote only on factual issues but may express views on legal matters without voting rights.

People's jurors are randomly selected from a roster of eligible citizens who meet statutory requirements (eg, age, education, no criminal record). In specialised cases, courts may select jurors with relevant professional expertise.

There are ongoing policy efforts to promote diversity and broaden participation on the bench through these juror mechanisms.

Law stated - 15 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

According to the Civil Code, effective as of 1 January 2021, the ordinary limitation period for civil claims is three years; although special rules, either shorter or longer than three years, will apply to certain types of disputes. It is worth noting that the time limits do not generally apply to confirmation and formation actions, including claims arising from property rights, family relationships or personal rights, nor to specific claims such as claims for public maintenance funds.

The limitation periods for some specific types of cases are set out by other laws as follows:

- claims for compensation or payment of insurance by the insured or the beneficiary of a non-life insurance policy from the insurer: two years;
- claims for disputes arising from an international contract for the sales of goods or a contract for the import and export of technology: four years; and
- claims for payment of insurance by the insured or the beneficiary of a life insurance policy from the insurer: five years.

The above limitation periods start from when the claimant knows or should have known the facts giving rise to his or her claim and who the accused is. In any event, if more than 20 years have passed since the date of the occurrence of facts giving rise to the claim, the court shall not offer any protection. However, there is an exception for product liability claims. The right to claim compensation for damage caused by defective products shall be void 10 years after the products are delivered to the first consumers, unless the product's expressly stated warranty is longer.

The law provides rules to suspend the limitation period if, within the last six months of the limitation period, a right holder is unable to exercise the right to claim owing to existence of any of the following obstacles:

- *force majeure*;
- the right holder with no or limited capacity for performing civil juristic acts has no legal representative, or his or her legal representative dies or loses the capacity to perform civil juristic acts or the right to representation;
- neither a successor nor an administrator of estate has been determined after the opening of succession;
- the right holder is controlled by the obligor or other persons; and
- other obstacles resulting in the failure of the right holder to exercise the right of claim.

The limitation period shall expire six months after the causes of such suspension are eliminated.

In addition to suspension, the limitation period can be interrupted according to law. The limitation period is interrupted if legal proceedings are initiated or if a party demands or agrees to the fulfilment of its obligations. The limitation period commences anew from the time of interruption and the limitation period can be interrupted repeatedly.

Article 197 of the Civil Code further regulates that the periods, calculation methods and reasons for suspension or interruption in respect of the limitation period shall be prescribed by law, and those agreed by and between the parties shall be null and void. A party's prior waiver of the benefit of the limitation of action shall be null and void.

Furthermore, even if the statute of limitations has expired, the plaintiff can still file a lawsuit. The people's court shall accept the filing when the lawsuit is within the scope of civil lawsuits to be accepted and cannot voluntarily dismiss the plaintiff's claim on the ground that the statute of limitations has expired.

Law stated - 15 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

By law, generally, there are no mandatory pre-action requirements imposed before the civil proceedings can be issued, except for in the following cases:

- shareholder derivative lawsuits: the shareholder must first request the (board of) supervisors or the board of directors (executive director) to initiate the proceedings unless in the case of an emergency; and
- labour disputes: a labour dispute shall be first brought before the labour dispute arbitration committee for arbitration before proceeding to the court.

In practice, most civil disputes (suitable for mediation) will first be submitted to mediation. In Shanghai Courts, parties to the cases of labour dispute, road accident, family, small debt and other simple cases usually first go through the pre-litigation mediation, in which the parties are free to choose whether to accept mediation. If no agreement is reached, then the case will go to trial and the people's court will render a judgment without delay.

There are also some pre-action measures available to the party to assist in bringing an action. For example, for the purposes of a smooth investigation during the proceeding, the enforceability of the judgment and the suspension of damage caused to the party, such party can apply to the court for preservation of evidence, preservation of property and relevant injunctions before the action is initiated, depending on the circumstances and in the event of an emergency.

Law stated - 15 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

On 1 May 2015, the case acceptance system was reformed from a case-filing review system to a case-filing registration system. Under the case-filing registration system, the proceeding will commence when the people's court registers and files the complaint by the claimant. The court decides whether to file and register the complaint by the claimant or to require supplementary documents within seven days at the latest. If the complaint is

dismissed by the court, the claimant is entitled to appeal against the court's decision to the higher court within 10 days.

When the court decides to accept a filing, it must inform the parties, orally or in the notice of case acceptance or the notice of litigation response, of their rights and obligations to the litigation. Within five days of its acceptance of a case, the court must deliver a copy of the complaint to the defendant, and the defendant must file a motion of defence within 15 days of receiving the copy of the complaint.

Chinese courts are advancing towards digitalisation with the introduction of an online case filing system. Many courts now offer the option of initiating proceedings online, while some even mandate it. The specific requirements may vary across different courts. For instance, the Qingdao Intermediate People's Court insists on claimants filing their cases through its online system. Similarly, any party applying for compulsory enforcement at the Shenzhen Intermediate People's Court is required to submit their application online.

According to the data released by the Supreme People's Court, the number of cases accepted by courts across the country reached over 46 million in 2024, an increase of 1 per cent compared to that of 2023. The high volume of cases has long posed a challenge for judges, particularly in metropolitan areas such as Beijing and Shanghai. In these cities, capacity constraints significantly impact the efficiency of dispute resolution procedures. As a result, many cases are not concluded within the legally prescribed time limits. To address this, the courts are actively exploring various mechanisms to extend time frames at different procedural stages.

Relieving the pressure on judges is one of the most important topics in judicial reform. To alleviate the capacity issues, it is recommended to increase the proportion of judges, hire more supporting personnel to deal with the greater caseloads, further promote the implementation of multiparty dispute resolution mechanisms, rationally divert cases through litigation source management and strengthen the pre-litigation mediation mechanism.

Law stated - 15 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

A general procedure for a civil claim at first instance shall be concluded within six months of the commencement of the proceeding, which includes the following stages:

- starting proceeding: the civil proceeding starts when the complaint by the plaintiff is filed by the court;
- notice to the defendant and defence: within five days of the acceptance of the case, the defendant shall be given the notice of case acceptance and served with a copy of the complaint; the defendant must file a motion of defence within 15 days of receipt of the complaint; and the court shall deliver a copy of the motion of defence to the plaintiff within five days of the date it receives the motion of defence;
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collegial bench: the parties shall be notified within three days of the members of the collegial bench being decided;

- evidence submission: the period for evidence submission can either be decided by the parties, subject to court approval, or determined by the court (15 days minimum);
- counterclaims (if any): the defendant can file a counterclaim before the end of the period for evidence submission;
- hearing: the court shall notify the parties and other participants in the action three days prior to the hearing. During the court hearing, the procedure is generally divided into investigation of the facts, presentation of evidence and debate; and
- issuing judgment: if a judgment is pronounced in court, the written judgment shall be issued and delivered to the parties within 10 days. If a judgment is pronounced later on a fixed date, the written judgment shall be issued to the parties immediately after the pronouncement.

If there is a need for an extension under special circumstances, an extension of six months may be granted, subject to the approval of the president of the court. If there is a need for a further extension, the approval of the higher-level court is required.

When a summary procedure is applied, the court shall conclude the adjudication within three months of the case being accepted. Under special circumstances that require an extension, the president of the court may render a one-month extension.

When a petty lawsuit procedure is applied, the court shall conclude the adjudication within two months of the case being accepted. Under special circumstances that require an extension, the president of the court may render a one-month extension.

The period for the trial of foreign-related civil cases by courts shall not be subject to the aforementioned time limits and restrictions.

If a party fails to perform an effective judgment, the other party can apply to the court for enforcement. The time limit to apply for enforcement of a judgment is two years, calculated from the last day of the period specified in the written judgment. If the judgment does not specify the period of performance, the time limit shall be calculated from the day when the judgment takes effects. The laws regarding suspension and termination of the statute of limitation shall also be applicable here.

Law stated - 15 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Upon acceptance of a case by the people's court, the defendant has the right to challenge the court's jurisdiction, including objections to territorial jurisdiction, hierarchical jurisdiction and the existence of a voluntary arbitration agreement between the parties for submission to an arbitral institution. The objection shall be raised during the time frame for submission of the defence. The people's court shall examine the objection raised by the defendant

within 15 days. Where the objection is justified, the people's court shall rule that the case be forwarded to a people's court which has jurisdiction; where the objection is groundless, the people's court shall rule that the objection be rejected. Although Chinese law does not expressly provide for anti-suit injunctions, it could constitute a behaviour preservation, which allows the people's court to order a party to perform or refrain from certain actions if their conduct might obstruct the enforcement of a judgment or cause other harm to the litigants. The court may grant such measures upon a party's application or initiate them independently when necessary. Anti-suit injunctions in China are primarily applied in maritime law and intellectual property disputes, where parallel proceedings in foreign jurisdictions could undermine domestic judicial outcomes.

For example, in the case between *Kang Wensen and Huawei regarding confirmation of non-infringement of patents and standard essential patent*, Huawei successfully obtained an injunction order against Kang Wensen to prohibit the latter from applying for enforcing the court judgment of the parallel litigation in Germany before a final judgment was rendered by the Supreme People's Court . Non-compliance with this injunction would trigger penalties of 1 million yuan per day.

Law stated - 15 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The case management structure in the Chinese court system is established from the top down. An inquisitorial procedure is adopted in the Chinese judicial system in which the parties play a relatively minor role and have limited influence over procedural timelines. Parties can request extensions for procedural deadlines, such as the submission of evidence or filings, but these are subject to court approval and must be justified by valid reasons (eg, the need for additional evidence collection or unforeseen circumstances). Extensions are generally at the discretion of the presiding judge and are not automatically granted upon request.

Law stated - 15 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no compulsory or statutory duty for both parties to preserve evidence pending trial. Strategically, in civil litigation, one would benefit immensely from preserving evidence in a comprehensive manner.

Under the Civil Procedure Law, if evidence may be lost or it may be difficult to obtain evidence in the future, a litigant may apply to the people's court for the preservation of evidence during the proceedings. The people's court may also voluntarily adopt

preservation measures. In urgent circumstances, an interested third party may also file the application. If the preservation measures might cause losses or restrictions of use and circulation to the evidence holder, the party applying for such evidence preservation shall be required by the people's court to provide corresponding security.

In Several Provisions on Evidence for Civil Actions (effective from 1 May 2020), when a litigant submits the documentary evidence and relevant documentations to the court, it must submit copies to the opposing parties. However, the parties are only responsible for sharing documents related to their burden of proof and are not required to provide any documentations related to the facts.

Furthermore, a party may apply to the people's court to order the other party to provide documentary evidence. That application will be approved if the party controls the documentary evidence and one of the following circumstances exists:

- documentary evidence has been cited by the party controlling the documentary evidence in the litigation;
- documentary evidence has been prepared for the interests of the applicant;
- there is documentary evidence that the applicant is entitled to consult or obtain in accordance with the law;
- there are account books and original vouchers for bookkeeping; or
- other circumstances under which the people's court deems that documentary evidence shall be submitted.

Law stated - 15 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

'Privilege' often refers to attorney–client privilege, meaning a client's right to refuse to disclose, and to prevent anyone from disclosing, confidential communications between him or her and his or her attorney. The concept of 'privilege' does not exist in China, which means that legal advice from an attorney or an in-house lawyer is not protected or privileged.

Both the Lawyer's Law and the Civil Procedure Law stipulate that an attorney must keep public and commercial secrets and must not breach the privacy of the parties. However, article 75 of the Civil Procedure Law provides that any corporate entity or individual who has information about the case is obliged to testify in court. This means that an attorney may be forced to disclose or testify on confidential or privileged information in court.

Law stated - 15 May 2025

Evidence – pretrial

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11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Under current Chinese civil procedure law, there is no mandatory requirement for parties to exchange written evidence from witnesses or experts prior to trial. However, courts generally require all evidence – documentary, witness-related or expert – to be submitted within a specified evidence exchange period, particularly in ordinary procedures. This period is determined by the court and may include a formal pretrial exchange session.

Witness evidence

In principle, witnesses are expected to appear in court and testify in person. The judge conducts the main questioning, with parties permitted to raise additional questions under court supervision. Written witness statements may be submitted, but they are admissible only under exceptional and justified circumstances (eg, illness, distance, emergencies) and subject to court approval. If these conditions are not met, the written statement generally lacks evidentiary weight and may be excluded.

Expert opinions

According to article 82 of the Civil Procedure Law, parties may engage persons with specialised knowledge to provide opinions. These individuals act as party-appointed expert assistants, not independent expert witnesses. Their written opinions must be submitted during the evidence phase or as directed by the court. In complex cases, courts may also appoint neutral forensic experts whose reports carry higher probative value.

Law stated - 15 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence should be presented at the stage of ‘investigation’, which is conducted by the people’s court. In principle, each piece of evidence shall be presented in the original and cross-examined, unless the original cannot be provided for objective reasons, in which case a verified copy may be presented in lieu of the original. For each piece of evidence, cross-examination should be directed to and centred around three main aspects: authenticity, legitimacy and relevance.

The burden of proof lies with the party asserting the claim. Therefore, in most cases, the first obligor of evidence presentation is always the plaintiff, who must try his or her best to obtain evidence and present it in court. In some cases, the burden of proof shall be borne by the opposing party, the defendants. The most common cases of reversal of the burden of proof are as follows:

- in a dispute over a work-related injury, the employer must prove that it is not work-related, not the employee; and
-

in a dispute over patent infringement of a new product, the alleged infringer must prove the difference between the product manufacturing methods.

It is compulsory for witnesses to testify and be cross-examined at trial unless witnesses are subject to exceptions. If a pretrial evidence exchange meeting is held, witnesses may also testify at the meeting. By contrast, an expert witness is only required to testify in court when the parties object or the court deems it necessary. If an expert is unable to attend the hearing for legitimate reasons, he or she must submit a written reply. The oral statement or the written reply, whether made at the hearing or in the pretrial meeting, will be deemed oral evidence.

Law stated - 15 May 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies refer to measures available to the parties before the final resolution of their legal dispute, mainly to prevent evidence, property or actions of the parties from being damaged or dissipated. In accordance with the Civil Procedure Law, these interim remedies can be granted on an urgent basis before litigation is commenced, and the party must bring a lawsuit within 30 days of the date when a pre-action order is made.

Preservation of property, once initiated successfully, will often take the form of sealing up, detaining or freezing, thereby limiting any future transfer, removal or alteration of such assets without courts' prior approval. This preservation applies to both pre-action and post-action proceedings, which means a party may submit an application before or after a claim is formally brought to court. In this regard, preservation of property has similar characteristics and functions as freezing injunctions.

The aim of action preservation is to order one party to act or not to act in a particular way. Action preservation can be held before or after the commencement of the proceeding. However, currently, it is only possible in intellectual property disputes to reserve an act (injunction) before proceeding.

In addition, a court order may also be obtained for preserving relevant evidence if there is a high likelihood that the evidence would be destroyed or it would become difficult to locate its whereabouts. This could be achieved by sealing, detaining, taking photographs, making sound recordings or visual recordings, making reproductions, conducting authentication, forensic inspection or drawing up written statements.

A court adopting preservation measures may order the applicant to provide security, and if the applicant does not provide security, the court will rule that the application be thrown out. Preservation security includes real estate mortgage, deposit and property preservation liability insurance.

Such remedies are also available in support of foreign proceedings. Considering that overseas creditors usually do not have real estate in China, and the payment process of overseas funds to China is complicated, overseas entities can use property preservation liability insurance as a security method, which is convenient and efficient to operate.

For claims involving overdue alimony, maintenance, child support, medical expenses or employee payments, or other urgent matters, courts may issue a preliminary enforcement order. This means that a preliminary payment would be made from one party to the other before the merit of the case is officially adjudged. Conditions should be met before an order can be granted, considering both the applicants' dependence on life or impacts on business operation and the financial capacity of the party against whom the application is made.

Law stated - 15 May 2025

Remedies

14 | What substantive remedies are available?

Depending on the nature of disputes, common substantive remedies include cessation of infringement, removal of obstacles, elimination of dangers, return of property, restoration to the original condition, repair, reworking or replacement, continuous performance, compensation for losses, payment of damages for breach of contract, elimination of ill effects and rehabilitation of reputation and extension of an apology. The remedies can be applied exclusively or concurrently.

In civil litigation, remedies are mostly compensatory, with punitive damages as an exception. However, according to the opinions of the Supreme People's Court on strengthening the punishment of intellectual property infringement, in the field of intellectual property, if the circumstances are serious, the punitive damages claimed by the right holder shall be supported according to law and have a deterrent effect, increasing the importance of punitive damages against intentional infringement.

Interest is commonly payable, particularly when the outcome of the judgment is of a monetary nature. According to the different legal bases of substantive law and procedural law, interest can be divided into general debt interest and delayed performance interest. The former refers to the interest determined in the effective judgments in accordance with the substantive law (such as the Civil Code), and the latter refers to the interest that the enforced person needs to pay due to the delay in performance in the enforcement procedure according to article 264 of the Civil Procedure Law.

Law stated - 15 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The settlement can be attained via two routes in civil litigation, namely Settlement and Mediation. The principal distinction between the two approaches is that the former is conducted by the two parties without the court's involvement, while the latter is led and facilitated by the authority of the court.

First, the Settlement refers to the voluntary settlement by the parties on an equal basis. After the parties reach settlement, the dispute can be officially resolved by either the plaintiff's withdrawal of the claims, or the ruling recognising the validity of a settlement agreement issued by the court. Second, the courts could carry out mediation in the trial of civil cases pursuant to the principle of voluntary participation by litigants, based on clearly substantiated facts. The mediation may be presided over by the judge or the collegiate bench. When an agreement is reached through mediation, the court shall prepare a mediation ruling, which shall state the claim, the facts of the case and the mediation outcome, signed by the judge and the court clerk, be affixed with the people's court's seal, and served on both parties.

Law stated - 15 May 2025

Enforcement

16 | What means of enforcement are available?

There are a wide variety of measures to enforce a judgment, including:

- to detain, freeze, transfer or sell judgment debtors' property;
- to withhold judgment debtors' lawful income in a proportionate manner;
- to evict judgment debtors from the house or land so occupied or used; or
- to compel performance or arrange third parties to perform at the expense of the judgment debtors, etc.

After the case enters the enforcement procedure, the court can take enforcement or restrictive measures against the person subject to the execution upon application or ex officio. For example, the court can:

- issue a property declaration order to force the person subject to enforcement to report in writing his or her savings, income, real estate, property rights and other property conditions within the time limit specified;
- summon (detain) the person subject to enforcement for questioning to find out his or her property situation and ability to perform his or her obligations;
- restrict the consumption of the person subject to enforcement when he or she fails to fulfil the payment obligation within the time limit specified;
- put the person subject to enforcement on the list of persons subject to enforcement for dishonesty;
- restrict the person subject to enforcement from leaving the country;
- fine or detain the person subject to enforcement;
- post a bounty announcement to find the enforceable property of the person subject to enforcement;
- publish in the media the information of the person subject to enforcement not fulfilling his or her obligations; and

- punish the person subject to enforcement with the crime of refusing to execute the judgment, if he or she was found to be capable of executing the judgment.

Law stated - 15 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Hearings in civil proceedings must be accessible to the public, except for cases involving state secrets, privacy issues or topics otherwise stipulated under the law.

For divorce cases and cases concerning trade secrets, public hearings shall not be held if a prior application is filed by a party.

Court documents such as judgments and orders are available to the public via an [official website](#). There are also other websites and databases from which judgments and orders can be downloaded. Other court documents, such as witness statements and pleadings, are generally not available to the public. With proper authorisation, qualified Chinese lawyers may have access to these documents following relevant procedural steps. Recording or duplicating these documents is permitted.

Law stated - 15 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The litigation fees that the parties shall pay to the people's court include: (1) case acceptance fees, (2) application fees for special procedures, such as enforcement or preservation measures, (3) witness-related expenses, such as transportation, accommodation, living costs and loss of work allowances, (4) other relevant costs for appraisers, translators and adjusters appearing in court on the date designated by the people's court. The specific amounts of fees are determined according to the unified national standards. These litigation costs are typically borne by the losing party subject to the court's discretion.

The court has no power to order attorney fees except for in the following two situations: (1) when the parties have agreed in a contract that when a dispute related to the contract occurs, the attorneys' fees incurred by the winning party shall be borne by the losing party, and the court may order the losing party to bear the attorneys' fees as agreed; or (2) when the law explicitly prescribes that the losing party shall bear the attorneys' fees of the winning party (a reasonable part, but not all). According to the laws and relevant judicial interpretation, among others, the following circumstances or types of cases belong to this

situation: personal injury compensation cases, copyright infringement cases, trademark infringement cases, patent infringement cases, unfair competition cases, contract disputes in which the creditor exercises their right of revocation, and legal aid cases.

In China, the plaintiff is not required to provide security for the defendant's expenses during the litigation, but if the plaintiff applies to the court for preservation of the defendant's properties before or during the litigation, the court may order the plaintiff to provide certain security in accordance with the law.

Law stated - 15 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In China, there is a risk agency charging method that can be chosen by and between lawyers and clients. The risk agency charging method means: no win, no fee. The lawyer can charge a fixed amount or a certain percentage of the client's final realisation of the creditor's rights or the reduced debt. The total maximum amount of attorneys' fees charged must comply with the provisions of the Opinions on Further Regulating Lawyer's Service Fees:

- when the target amount is less than 1 million yuan, the total maximum amount of attorneys' fees charged must not exceed 18 per cent of the target amount;
- for the portion of the target amount that is more than 1 million yuan but less than 5 million yuan, it must not exceed 15 per cent of that portion;
- for the portion of the target amount that is more than 5 million yuan but less than 10 million yuan, it must not exceed 12 per cent of that portion;
- for the portion of the target amount that is more than 10 million yuan but less than 50 million yuan, it must not exceed 9 per cent of that portion; and
- for the portion of the target amount that is more than 50 million yuan, it must not exceed 6 per cent of that portion.

The risk agency charging method must not be applied in the following cases:

- marriage or inheritance;
- requests for social insurance benefits or minimum living security benefits;
- requests for child supports, alimonies, pensions, relief funds or compensation for work-related injuries; or
- requests for employment remunerations, etc.

China's legal system does not have any system or rules similar to the common law principles of prohibiting maintenance and champerty. Although there is no inherent legal

obstacle to the development of third-party funding, the legitimacy of third-party funding is currently not legally clarified, and no regulatory measures have been taken.

In practice, a number of institutions provide third-party litigation support services, which include formulating litigation plans through case background investigation and risk assessment, bearing various expenses of the case, obtaining corresponding benefits based on the outcome of the case and providing litigation support for lawyers. Bangying Litigation Investment, established in 2015, and the Dingsong Commercial Dispute Resolution Platform, established in 2016, are examples of such institutions.

Law stated - 15 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Legal cost insurance in China is not as developed as in some Western countries, and it is rarely used in litigation.

However, the mechanism of liability insurance for property preservation in litigation has developed rapidly and is being used more and more in litigation. In liability insurance for property preservation, the applicant for property preservation purchases liability insurance products from an insurance company whose qualifications are recognised by the court, and the insurance company issues a letter of guarantee to the court to assume the property damage caused to the defendant if the preservation proves to be wrong.

Law stated - 15 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under the Civil Procedure Law, there are concepts of 'joint action' and 'representative action'.

If there are two or more parties on one or both sides, the subject matter of the action is the same or of the same category and the court considers that the case can be tried as a joint action, the case shall be tried as a joint action, subject to the consent of the parties.

Representative action is a kind of joint action. In a representative action, one party consists of numerous persons and the action may be brought by a representative elected by these persons. The procedural acts of this representative shall be binding on all members of the party that he or she represents. However, before the representative changes or relinquishes the claims, or recognises the claims of the opposing party or participates in mediation, the consent of the parties he or she represents must be obtained. In China, collective actions mostly occur in labour disputes, especially in cases of equal pay for equal work.

A recent steady development of class actions has occurred in the securities industry. Article 95 of the new Securities Law, promulgated on 28 December 2019, basically follows the provisions above on joint action and representative action. When an investor files a securities civil compensation lawsuit pertaining to a false statement or other legal grounds, if the subject matter is of the same type and there are multiple persons in one party, a representative may be appointed for the lawsuit pursuant to the law. It further stipulates the mechanism of a special representative lawsuit. An investor protection institution may be appointed by more than 50 investors to participate in the action as a representative to register with the people's court for the right holders confirmed by the securities registration and clearing institution, unless the investors explicitly express their unwillingness to participate in the lawsuit. The special representative action, which is characterised by 'implied participation and express withdrawal', introduces the concept of 'withdrawal of class action' for the first time in the Chinese legal system. On 31 July 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning Representative Actions Arising from Securities Disputes, which further refined this mechanism. On 12 November 2021, the first instance judgment of the *Kanyemei Pharmaceutical* case was issued. This case is the first case in China's capital market to apply the special representative action procedure for securities disputes, which has opened up a feasible legal remedy channel for a large number of claimants with the same cause of action.

Law stated - 15 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In general, Chinese courts follow the two instances of trial system, as prescribed by law. Normally, the first instance judgment or ruling is not final. If a party disagrees with a first instance judgment or ruling made by a local people's court, it shall have the right to appeal to the people's court at the next higher level within a certain period.

To exercise the right of appeal, the party must meet the following conditions:

- an appeal must be filed by a person who has the right to appeal;
- only the first instance judgment or ruling can be the subject of appeal; a mediation agreement cannot be the subject of an appeal;
- an appeal must be filed with the statutory time limit: 15 days for judgment, 10 days for ruling and 30 days for parties that are not present in China; and
- when a party appeals to a higher court, it must file with a petition stating the grounds for appeal.

The second instance judgment or ruling becomes legally effective immediately and shall be final. However, if the party that considers a legally effective judgment or ruling to be wrong, it may apply to the people's court at the next higher level or the original court for a retrial. Nevertheless, the application for a retrial does not mean that the enforcement of the judgment or ruling is suspended. The court shall conduct a retrial only when the

application for retrial by a party falls under any of the circumstances explicitly stated in the law, for instance: there is new evidence that is sufficient to overturn the original judgment or ruling; an error was found in the application of the law in the original judgment or ruling; or the original judgment or ruling is not formed on the basis of due process.

Law stated - 15 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

It is not easy to enforce a foreign court judgment in China. A foreign judgment holder can file a petition and demand a competent Chinese court to enforce and recognise his or her foreign judgment, but the Chinese court can only recognise and enforce the foreign judgment if a bilateral enforcement treaty or arrangement exists between China and the country or region where the judgment was made; a multilateral convention exists that was signed by China; or the country where the foreign judgment was given had enforced judgments of Chinese courts previously, which is the principle of reciprocity.

Regarding multilateral conventions, on 12 September 2017, China signed the Hague Convention on Choice of Court Agreements, which is pending approval by the National People's Congress. On 2 July 2019, Chinese delegates, together with delegates from 80 other countries, signed the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

Regarding the principle of reciprocity, the first time this principle was relied upon by Chinese courts was in 2014. After the High Court of Singapore ruled to recognise a judgment made by the Suzhou Intermediate People's Court, Jiangsu Province, the Nanjing Intermediate People's Court, Jiangsu Province, ruled to recognise a civil judgment made by the High Court of Singapore in accordance with the principle of reciprocity. In recent years, China's judicial system has become increasingly open to promote economic development and communication. In 2015, the Supreme People's Court noted that:

If the countries along the 'Belt and Road' have not yet concluded any agreement on mutual legal assistance with China, people's courts may, in accordance with the intent of international judicial cooperation and exchange as well as the promise by the other countries to provide judicial reciprocity to China, carry out the pilot practice that the people's courts in China provide judicial assistance to the parties in other countries in advance, actively promote the formation of reciprocity relations and actively promote and gradually expand the scope of international judicial assistance.

Regarding bilateral treaties, a considerable number of foreign cases are recognised and enforced successfully by Chinese courts by these means. Examples include the mutual legal assistance agreements between China and Poland, China and Russia, and China and the United Arab Emirates.

Law stated - 15 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Obtaining evidence in China for use in foreign proceedings falls under judicial assistance as prescribed by the Civil Procedural Law. It must be conducted through following channels:

- **Bilateral treaties:** foreign parties could apply for mutual legal assistance in accordance with bilateral treaties concluded between China and foreign countries. For example, the Treaty on Criminal Judicial Assistance between Australia and China, which entered into force in 2007. This application is usually submitted to the Ministry of Justice, which would then review and determine whether the evidence obtainment would infringe the legal principles and national interests of China.
- **International convention:** according to the Hague Evidence Convention, the application for evidence collection is submitted by the application court to the central organ of its own country, which will in turn transfer the application to the Ministry of Justice. After receiving the application, the Ministry of Justice will pass it on to the Supreme People's Court for approval. If approved, it will then be transferred to a lower court for execution.
- **Diplomatic channel:** an embassy or consulate of a foreign country based in China may serve documents on a citizen of a foreign country and carry out an investigation and collection of evidence, but it must not violate Chinese laws and must not adopt mandatory measures.
- **International cooperation:** foreign countries can submit evidence applications to China through informal channels, such as the police or anti-corruption authorities. However, this assistance is based on the principle of reciprocity.
- Except for the circumstances stipulated above, no foreign agency or individual can carry out service of documents, investigation and collection of evidence in China without the consent of the relevant administrative authorities.

Law stated - 15 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

China's Arbitration Law is not enacted based on the UNCITRAL Model Law, but the latter does have a great influence on the enactment of the former.

The Arbitration Law deviates from the UNCITRAL Model Law in the following aspects, among others:

•

Both the court and the arbitration commission are entitled to rule on the validity of an arbitration agreement, and the ruling by the court is prioritised under the Arbitration Law.

- An ad hoc arbitration is generally not permitted under the Arbitration Law. An exception to this is that, on 9 January 2017, the Supreme People's Court issued the Opinion on the Provision of Judicial Protection to the Development of the Free Trade Zone, article 9, which allows two parties registered in free trade zones to resolve their disputes through ad hoc arbitration, provided that the dispute is resolved in a specific place, under specific arbitration rules and by specific people. Subsequently, Zhuhai Arbitration Commission, China Maritime Arbitration Commission, Shanghai Municipal Bureau of Justice and Shanghai Arbitration Commission have issued sets of rules and guidelines on ad hoc arbitration.
- The arbitral tribunal or arbitration institution has no power to grant the interim measures, the application of which by a party must be forwarded to a competent court through the arbitration institution for determination under the Arbitration Law.
- The scope of arbitrability is narrower under the Arbitration Law. For example, the Arbitration Law excludes disputes arising from personal rights, such as marriage, adoption, guardianship, maintenance, inheritance, infringement of right of publication, revision and authorship.
- Under the Arbitration Law, both procedural irregularities and limited substantive reasons are grounds based on which a domestic arbitral award may be set aside or refused for enforcement, while only serious procedural irregularities are listed as grounds under the UNCITRAL Model Law in the same regard.

Law stated - 15 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

An effective arbitration agreement must be in writing (no matter if stipulated in a contract or provided in a separate agreement) and include the following elements:

- the expression of the parties' intention to submit for arbitration;
- the matters to be arbitrated; and
- the arbitration commission agreed by the parties.

In addition, an arbitration agreement shall be invalid if any of the following circumstances occur:

- the matters agreed upon for arbitration are beyond the scope of arbitration prescribed by law;
- an arbitration agreement is concluded by persons without or with limited capacity for civil acts;
- one party forces the other party to sign an arbitration agreement by means of duress;

- the parties agree that a dispute may be submitted to an arbitration agency for arbitration or filed with the people's court for commencement of legal proceedings; unless one party submits for arbitration, and the other party fails to object before the arbitration tribunal commences the first hearing;
- an arbitration agreement provides for two or more arbitration agencies, and the parties are unable to agree on the choice of an arbitration agency; or
- an arbitration agreement has not specified or has not specified clearly items for arbitration or the choice of an arbitration commission, and the parties concerned failed to conclude a supplementary agreement.

Law stated - 15 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Under the Arbitration Law, an arbitral tribunal may comprise three arbitrators or a sole arbitrator. In practice, unless otherwise stipulated by arbitration rules or agreed by the parties, three arbitrators will in general be appointed.

For the arbitral tribunal comprising three arbitrators, each party shall select or authorise the chair of the arbitration institution to appoint one arbitrator. The third arbitrator (ie, the presiding arbitrator) shall be selected jointly by the parties or be nominated by the chair of the arbitration institution in accordance with a joint mandate given by the parties.

If the parties fail to appoint an arbitrator within the time limit set under the arbitration rules, the arbitrators will be appointed by the chair of the arbitration institution.

The parties to the arbitration can apply for the withdrawal of the arbitrator after the appointment if the arbitrator is found to be improper or impartial in accordance with article 34 of the Arbitration Law. However, an application for withdrawal shall be submitted prior to the first hearing with the statement of reasons. If reasons for the withdrawal only became known after the commencement of the first hearing, an application for withdrawal may also be submitted before the conclusion of the last hearing.

Law stated - 15 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Chinese arbitration institutions typically maintain a diverse pool of arbitrators that includes both Chinese and foreign experts. This international composition allows for a wide range of expertise and experience, ensuring that parties to an arbitration can select arbitrators who are well-suited to handle their disputes, irrespective of the arbitrators' nationalities.

For Chinese residents who are eligible to be appointed as an arbitrator, they must be fair and honest persons who should satisfy one of the following conditions as stipulated by law:

- have passed the Chinese bar exam and obtained the legal professional qualification, and have engaged in arbitration work for eight years;
- have worked as a lawyer for eight full years;
- have worked as judges for eight years;
- are engaged in legal research or legal teaching with a senior academic title; or
- have legal knowledge and are engaged in professional work relating to economics and trade with a senior academic title or at the equivalent professional level.

For a foreign resident appointed as an arbitrator in the domestic arbitration institutions, the law does not specify the conditions and requirements; however, they must be equipped with comparable qualifications as required for Chinese arbitrators.

In addition, the arbitration institution prepares the panel lists of arbitrators according to their different specialisations, which ensures the needs of complex arbitration.

Law stated - 15 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Law, Chapter IV, titled 'Arbitration Procedure', provides the rules on the following procedural matters:

- application and acceptance:
 - requirements for application of arbitration;
 - list of documents;
 - acceptance of arbitration and distribution of arbitration rules;
 - dismissal or modification of the arbitration claim;
 - property preservation; and
 - attorney entrustment;
- composition of the arbitral tribunal:
 - number of arbitrators;
 - appointment and removal of arbitrators; and
 - withdrawal of arbitrators; and
- hearing and arbitral awards:
 - notification and service;
 - recording of hearings;

- evidence rules;
- expert rules;
- evidence preservation;
- reconciliation; and
- time limit, content and signature of arbitral awards.

Law stated - 15 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

In summary, the court's powers to support and oversee arbitration are statutory and cannot be entirely overridden by the parties' agreement due to public policy considerations, protection of parties' rights and legal safeguards.

The court may intervene during arbitration under the following circumstances and grounds:

- Ruling on the validity of the arbitration agreement: at the request of a party, the court may rule on the validity of the arbitration agreement; if both the arbitration institution and the court are requested by the parties to rule on the validity of the arbitration agreement, the court's decision prevails (article 20 of the Arbitration Law).
- The issuance and enforcement of interim measures: when interim measures such as an interim injunction, evidence preservation and property preservation are applied during the arbitration, such application shall be forwarded to the competent courts through the arbitration institution for issuance and, later, enforcement (articles 28 and 46 of the Arbitration Law; articles 81 and 100 of the Civil Procedure Law).
- Setting aside an arbitral award: a party to the arbitration may request the competent intermediate people's court to set aside an arbitration award within six months of receipt of the award if this party can furnish evidence to prove the existence of any of the circumstances listed in article 58 of the Arbitration Law (for domestic arbitral awards without foreign-related elements) or in article 274 of the Civil Procedure Law (for domestic arbitral awards with foreign-related elements).
- Enforcement of an arbitral award: if one party fails to execute the arbitral award, the other party may apply to a competent court for enforcement (article 62 of Arbitration Law).
- Request explanations from arbitration institutions and examine arbitration files: in the process of reviewing applications to set aside or enforce arbitral awards, the people's court may, based on the specifics of the case, request the arbitration institution to provide explanations and clarifications regarding matters related to the arbitration proceedings. If the court deems it necessary to examine the arbitration case files to address issues arising during the review, it may require the arbitration institution that rendered the award to submit the relevant arbitration files (article 30 of the Interpretation of Certain Issues of the Arbitration Law).

- Refusing enforcement of an arbitral award: at the enforcement stage of an arbitral award, a party against whom the enforcement is sought can request the court to refuse the enforcement of an arbitral award, if this party can furnish evidence to prove the existence of any of the circumstances listed in article 237 of the Civil Procedure Law (for domestic arbitral awards without foreign-related elements) or in article 274 of the Civil Procedure Law (for domestic arbitral awards with foreign-related elements), or in article 5 of the 1958 New York Convention (for foreign arbitral awards excluding those that are seated in Hong Kong, Macao and Taiwan, which are subject to different arrangements given or concluded).

Law stated - 15 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Interim measures, such as an interim injunction, evidence preservation and property preservation, are allowed before and during the arbitration proceedings. However, the arbitrators or the arbitration institution have no powers to issue or enforce evidence preservation and property preservation (articles 28, 46 and 68 of the Arbitration Law). Before commencing arbitration proceedings, the application for these interim measures must be directly requested by the parties to the court, where the respondent resides, or where the property or evidence in question is located. However, during arbitration proceedings, the application for interim measures may only be made through the arbitration institution, and parties to an arbitration may not directly request interim measures from the courts except in limited circumstances; for example, in arbitrations administered by the China International Economic and Trade Arbitration Commission, the Shanghai International Economic and Trade Arbitration Commission, the Shenzhen Court of International Arbitration, the Beijing Arbitration Commission or the China Maritime Arbitration Commission, parties may apply for interim measures directly to the International Commercial Court under the Supreme People's Court during the arbitration proceedings.

For other interim measures that are not specified, the process generally follows the specific rules of the arbitration institution and can be decided by the arbitration tribunal.

Law stated - 15 May 2025

Award

32 | When and in what form must the award be delivered?

The Arbitration Law does not set forth a time limit within which the award must be rendered. It leaves the relevant arbitration rules formulated by the arbitration institutions to deal with this matter.

Under their current arbitral rules, the China International Economic and Trade Arbitration Commission, the Shenzhen Court of International Arbitration, the Beijing Arbitration

Commission and the China Maritime Arbitration Commission all set a six-month limit for international proceedings and a four-month limit for domestic proceedings. Any suspension period shall be excluded when calculating the time period. Additionally, Upon the request of the arbitral tribunal, the President of the Arbitration Commission may extend the time period if he or she considers it truly necessary and the reasons for the extension truly justified.

According to article 54 of the Arbitration Law, an award must be delivered in writing with the following information set forth therein:

- the claims for arbitration;
- the facts of the disputes;
- the grounds upon which an award is given;
- the results of the judgment;
- the allocation of the arbitration fees; and
- the date of the award.

If the parties agree not to include in the award the facts of the dispute and the grounds on which the award is based, these matters may be omitted in the award. In addition, the award must be signed by the arbitrators and sealed by the arbitration institution. The arbitrator who disagrees with the award has the choice of whether or not to sign.

Law stated - 15 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An award is final and binding once it is rendered and it cannot be appealed. However, a party may request the intermediate people's court where the arbitration institution is domiciled to set aside an award under the grounds set forth by law.

Depending on the nature of the award, the grounds upon which the award is set aside or refused for enforcement vary.

For a domestic arbitral award without foreign-related elements, a court may rule to set aside or refuse to enforce it if a party can furnish evidence to prove that there exists any of the following circumstances:

- there is no arbitration agreement between the parties;
- matters decided in the award exceed the scope of the arbitration agreement or are not under the jurisdiction of the arbitration institution;
- the composition of the arbitral tribunal or the arbitration procedure is contrary to the legal procedure;
- the evidence on which the award is based is falsified;
- the other party has concealed evidence that is sufficient to affect the impartiality of the award; or

- the arbitrators have demanded or accepted bribes, committed illegalities for personal gain or perverted the law in making the arbitral award.

For a domestic arbitral award with foreign-related elements, a court may set aside or refuse to enforce it if a party can furnish evidence to prove that any of the following circumstances exist:

- the parties have neither stipulated an arbitration clause in their contract nor subsequently reached a written arbitration agreement;
- the party against whom the application of setting aside or enforcement is sought was not requested to appoint an arbitrator or take part in the arbitration proceedings or the person was unable to state his or her opinions for reasons for which he or she is not responsible;
- the composition of the arbitration tribunal or the arbitration procedure was not in conformity with the rules of arbitration;
- matters decided in the award exceed the scope of the arbitration agreement or are beyond the jurisdiction of the arbitration institution; or
- if the people's court determines that the enforcement of the award would be against the public interest.

A court cannot set aside a foreign arbitration award but may refuse to enforce it under the grounds set out in article V of the New York Convention.

In addition, there are circumstances that result in the failure of enforcement, and the court may make a ruling rejecting the application for enforcement if:

- the subject of the rights and obligations is not clear;
- the specific amount of payment is not clear or the calculation method is not clear, resulting in the specific amount not being figured out;
- the particular thing to be delivered is not clear or cannot be determined; or
- the standard, target and scope of performance of action are not clear.

If the arbitration award determines a continuation of the performance of the contract but does not specify specific contents, such as the rights and obligations that are to be continued to be performed, the specific method of performance and the deadline, resulting in the failure of enforcement, the court may also reject the application for enforcement.

Law stated - 15 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Foreign awards (including awards made in Hong Kong, Macao and Taiwan)

China is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention). China has entered reservations to the Convention, limiting its application to the recognition and enforcement of awards made in the territory of another contracting state and to disputes that are considered commercial under Chinese law.

Separate arrangements with Hong Kong and Macao (which are treated as a different jurisdiction for the purposes of arbitration) were entered into in 2000 (amended in 2020) and 2007 (amended in 2020) respectively, which both adopt the same general principles as the New York Convention (ie, the Arrangement Concerning Reciprocal Recognition Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region and the Arrangement Concerning Reciprocal Recognition Enforcement of Arbitral Awards between the Mainland and the Macao Special Administrative Region).

The Supreme Court has issued a judicial interpretation about the recognition and enforcement of arbitral awards made in Taiwan.

The non-enforcement of foreign arbitral awards and the setting aside or non-enforcement of domestic arbitral awards with foreign-related elements are both subject to a reporting mechanism established by the Supreme People's Court in 1995. According to this mechanism, if any intermediate people's court or specialised people's court proposes a ruling not to recognise and enforce a foreign arbitral award or to set aside or not to enforce a domestic award with foreign-related elements, the proposed ruling shall be reported to the high people's court within its jurisdiction for review. If the high people's court intends to agree with the proposed ruling after review, it must report the ruling to the Supreme People's Court for final review. The final ruling must be made based on and following the review opinion given by the Supreme People's Court.

Domestic awards

If an award is not complied with, the applicant may apply to the intermediate people's court where the respondent is domiciled or where the respondent's property is located (or the basic-level people's court appointed) to enforce it.

If the respondent applies to the competent court to set aside the arbitral award at the same time that the applicant has applied for enforcement, the enforcement proceedings will be suspended. If the court rules to vacate the arbitral award, the enforcement proceedings will be terminated. If the court rejects the application to set aside the award, the enforcement will resume.

The time limit to apply for enforcement is two years from:

- the last day of the performance period specified in the arbitral award;
- the last day of each performance period if the arbitral award requests performance in instalments; or
- the effective date of the arbitral award if the award does not specify a period for performance.

In the last six months of the time period available to apply for enforcement, if an application for enforcement cannot be filed because of a *force majeure* event or other obstacles, the calculation of the time limit will be suspended and will resume after the suspension causes are eliminated.

If the parties reach a settlement, or one party requests the performance of the award or agrees to perform the award, the time limit for applying for enforcement will be started again.

The proposed ruling of any intermediate people's court or any specialised people's court after review not to enforce or set aside the domestic arbitral award shall be reported to the high people's court within its jurisdiction for review; the final ruling shall be made based on the opinions given by the high people's court after it has reviewed the proposed ruling. In cases where the non-enforcement or annulment of a domestic award is based on grounds of violating public interest, a three-tier reporting system is applied, similar to the procedure for foreign awards.

Law stated - 15 May 2025

Costs

35 | Can a successful party recover its costs?

According to article 9 of the Arbitration Fee Collection Measures of Arbitration Institutions, fees paid to the arbitration institution must, in principle, be borne by the losing party. However, if a party only partially wins, the arbitration tribunal shall determine the allocation of fees based on the parties' liabilities and the percentage of the party's success.

The arbitration rules of an arbitration institution also involve the recovery of costs by a successful party. For example, article 55(2) of the 2023 Arbitration Rules of the China International Economic and Trade Arbitration Commission (CIETAC Arbitration Rules) provides that the arbitral tribunal has the power to decide in the arbitral award that the losing party shall compensate the winning party for the expenses reasonably incurred by it in pursuing the case.

Types of recoverable costs for a successful party typically include arbitration fees, legal fees, expert fees, administrative costs such as travel and accommodation for witnesses, and potentially third-party funding costs. According to article 48 of the CIETAC Arbitration Rules, third-party funding costs can be factored into the cost recovery decision by the arbitral tribunal. However, the specific costs recoverable will depend on the tribunal's assessment and the circumstances of the case.

Law stated - 15 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The main alternative dispute resolution (ADR) alternatives to civil litigation in China include negotiation, mediation and conciliation. Mediation is a signature element in China's amicable dispute resolution system, which has been a preferred dispute resolution throughout Chinese history and remains widely used today. Strong institutional and judicial encouragement exists to adopt ADR, particularly mediation, both before and during litigation or arbitration. In China, judicial mediation is quite common and is frequently adopted by the courts in the case management system. Besides, major arbitration institutions in China (eg, China International Economic and Trade Arbitration Commission, Beijing Arbitration Commission, Shenzhen Court of International Arbitration) also promote mediation–arbitration processes.

Law stated - 15 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Parties to litigation or arbitration are not required by law to consider ADR before or during proceedings.

The court or tribunal cannot compel the parties to participate in an ADR process.

Law stated - 15 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

When a claim is filed to the court, rather than bringing it to a full trial of civil proceeding, the parties concerned can ask the judges for judicial mediation, provided that it is requested under the free will of, and voluntarily by, the parties and the facts concerned are clear. Complex civil procedures are lessened if the dispute is solved through judicial mediation, which is more effective. If a mediation agreement is reached by the parties, the court shall prepare a written mediation statement confirming the mediation agreement, which has the same effect and enforceability as a judgment.

Law stated - 15 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

|

- 39 | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Strengthening interim measures in arbitration

In 2024, arbitration in China saw key developments. China International Economic and Trade Arbitration Commission (CIETAC) and Shanghai International Economic and Trade Arbitration (SHIAC) updated their rules to strengthen interim measures and emergency arbitrator procedures. SHIAC's 2024 Rules introduced a full chapter on such mechanisms. Notably, a Beijing court enforced an interim arbitral order issued by the Beijing Arbitration Commission that marked a first and signalled increased judicial support for arbitration.

Advancing regional judicial cooperation

Judicial cooperation across Greater China also advanced. On 29 January 2024, the Mainland–Hong Kong Arrangement on Reciprocal Recognition and Enforcement of Judgments took effect, expanding the range of enforceable judgments and covering IP, punitive damages and trade secrets. Macao courts recognised a CIETAC award for the first time, and Taiwan courts continued to recognise Mainland awards.

Reform of the Arbitration Law

A revised draft amendment to the Arbitration Law was published in April 2025 for public consultation. Compared to the bold 2021 draft, the 2025 version adopts a more cautious approach but aligns with the UNCITRAL Model Law. It introduces stricter arbitrator standards, clearer foreign award enforcement rules, improved confidentiality provisions and greater court support for arbitration. While no final timeline is set, the reform's steady progress suggests implementation could occur in the next legislative session.

Law stated - 15 May 2025



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Jan Holthuis

j.holthuis@burenlegal.com

BUREN

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LITIGATION

Court system

1 | What is the structure of the civil court system?

All civil dispute claims are initiated in the District Courts of Cyprus. Judges in the district courts are ranked as district judges, senior judges and presidents of the District Court. Claims are being allocated based on the claim value, up to €100,000, €100,000 to €500,000 and over €500,000 respectively. However, district and senior judges have also jurisdiction with respect to some property claims and claims relating to credit institution bonds bought between 2008 and 2013. Also, senior judges also have jurisdiction over accident claims and compulsory acquisition claims.

In 2022, a major reform of the Cypriot Court system took place, leading to the division of the Supreme Court of Cyprus into a Supreme Constitutional Court and a new Supreme Court as a third-tier appellate court. Moreover, the Court of Appeal was established as an intermediate appellate court. Additionally, Law 69(I)/2022 has been adopted, providing for the establishment of two new specialised courts, the Commercial Court and the Admiralty Court.

Law stated - 6 June 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The Cypriot legal system is adversarial, as judges oversee that the trial adheres to procedural norms and that evidence is admitted in accordance with established evidentiary rules. There is no trial by jury in Cyprus.

Significantly, the introduction of the new Civil Procedure Rules 2023 (CPR) is expected to enhance the role of the judges, in the sense that they are granted more powers in respect to controlling the court proceedings, ensuring that no unreasonable extensions are requested by the parties, which may cause unreasonable delays to the progress of the proceedings.

Law stated - 6 June 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The limitation periods for bringing civil claims are provided in the Law 66(I)/2012 (the Limitation Law). The general limitation period for claims founded on tort or contract is six years. However, shorter limitation periods apply for specific torts, such as negligence (three years), nuisance (three years), breach of statutory duty (three years), defamation (one year) and malicious falsehood (one year).

It is noted that there is no provision in the Limitation Law allowing for parties to agree to suspend time limits. Section 13 of the Limitation law, however, states that a limitation period is suspended in the following circumstances:

- for as long as a claimant was prevented by reason of force majeure from bringing the claim within the last six months of the limitation period;
- for as long as within the last six months of the limitation period the defendant or a person for whom the defendant is liable prevented the claimant from bringing a claim;
- in the event of death of a beneficiary to bring a claim, the suspension shall last until three months after the appointment of an executor or administrator of the deceased' estate;
- where, in accordance with the provisions of the applicable law on mediation, mediation is deemed to have been initiated and for the duration of such procedure.

Moreover, the court may extend a limitation period for up to two years if it considers this to be just and reasonable. This is subject to the provision that no claim may be brought after the expiration of 10 years from the date on which the relevant cause of action was completed.

The limitation periods prescribed in the Limitation Law do not affect the limitation periods with respect to specific types of claims prescribed in other statutes.

Law stated - 6 June 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

With the new CPR, pre-action protocols must be followed before legal proceedings are commenced. Regarding claims for a liquidated sum, the claimant must send to the proposed defendant a demand letter, which shall include details of the facts on which the claim is based, any relevant documentation, the outstanding amount owed to the claimant, as well as any legal interest, if applicable. The proposed defendant must respond within 14 days of receiving the demand letter, and if they do not admit the claim, they should set out the reasons why the claim is not admitted, attaching all relevant documentation relating to the claim. The same applies with respect to claims arising from traffic accidents or claims for personal injury, with the proposed defendant responding within 28 days of receipt of the letter.

In circumstances where the claim to be brought does not fall within any of the above prescribed protocols, the claimant must still send a demand letter to the proposed defendant, setting out the details of the claim.

Courts may take into account the parties' failure to comply with the pre-action conduct and impose sanctions on them, such as costs.

Law stated - 6 June 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

There are two methods of commencing civil proceedings under the new CPR. The first one involves the filing of a claim form, in accordance with Part 7 of the CPR. The second involves the filing of a claim form pursuant to an alternative procedure set out in Part 8 of the CPR, where there is no material dispute as to fact, or where this is required by a specific rule.

As regards the method of service to the defendant, any pleading and other court document must be served by a private process server. However, the claim form may be served within the jurisdiction to the defendant by such method and such place as the parties have agreed in writing.

Until the reform that took place in the Cypriot legal system, the accumulated backlog of cases severely affected the efficiency of the Cypriot justice. The reform of the Cypriot legal system and the introduction of the new CPR aims to clear the backlog of cases with a view to accelerating the administration of justice.

With respect to the fees for starting proceedings or issuing a claim, the amount of such fees depends on the scale of the claim.

Law stated - 6 June 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

Once a claim form is filed by the claimant, if the statement of claim is not filed together with the claim form, then it must be filed within 28 days from service of the claim form on the defendant. If the claim form is served on the defendant and states that a statement of claim will follow, the defendant must file a memorandum of appearance within 14 days of service of the statement of claim on them. Alternatively, the defendant files a memorandum of appearance within 14 days of service of the claim form.

Once a statement of claim is filed, the defendant must file their defence within 28 days from the filing of the memorandum of appearance. It is noted that the court has the power to extend the time of filing of the defence. Any reply to the defence (or defence and counterclaim) must be filed by the claimant within 14 days of the delivery of the defence to them.

Once the pleadings are concluded, the case proceeds to the case management stage.

Law stated - 6 June 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The defendant who wishes to challenge the court's jurisdiction may file an application, supported with evidence, to the court within 14 days of the filing of the defendant's memorandum of appearance stating that they intend to challenge the jurisdiction.

As regards anti-suit orders, such orders are issued in exceptional circumstances only. According to Cypriot case law, anti-suit orders are approached with great circumspection and are subjected to thorough investigation.

Law stated - 6 June 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Following the introduction of the new CPR, when a claim or application is filed, the parties need to agree on specific time frames that will include when supplementary affidavits will be filed, as well as whether any other applications may be filed in the framework of the proceedings. If the parties are unable to agree on the specific time frames, the court then has the power to determine the time frame of the court proceedings.

As per Rule 2.11 of the new CPR, the parties may extend any deadline except the deadline to file their pretrial catalogue, the date of the hearing, the period over which the trial takes place and any action that the court has determined a sanction in relation to it.

Law stated - 6 June 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Parties have a duty to preserve documents and other evidence pending trial. If a party suspects that the other party may destroy documents pending trial, it may apply for a court order preventing the other party from destroying, such documents, as well as for an ancillary disclosure order seeking the disclosure of such documents. If a party fails to make such disclosure, then they may not at a later stage present such documents as evidence in the trial.

A party must disclose all documents that are in their possession, custody, or control and that they intend to rely for their case or that are necessary for the other parties and the court to understand their case. As a matter of principle, parties have a duty to share all relevant documents, even those that are detrimental to their case.

If a party validly believes that the other party is in or has been in possession of a document that is relevant and material for the outcome of the proceedings, then it may apply for specific disclosure of such a document or category of documents.

Law stated - 6 June 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

As a general rule, privileged documents are required to be included in the list of disclosed documents. However, the party making the disclosure may object to their inspection and production by stating that they are privileged.

This usually applies for documents covered by privilege, such as legal privilege, without prejudice communication, documents that may self-incriminate a party and other documents of confidential nature.

Although any legal advice obtained by a practising lawyer who is a member of the Cyprus Bar Association is considered to be privileged, this is not entirely clear with respect to in house lawyers, who are not members of the Cyprus Bar Association. Although there is no Cypriot case on the matter, according to EU case law, legal privilege does not cover communications between clients and their in-house lawyers as there should be no employment relationship between the client and the lawyer.

Law stated - 6 June 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

Pursuant to the CPR, the court orders each party to serve on the opposing parties any witness statement on which the party intends to rely in court proceedings. The court may give instructions as to the order in which the witness statements will be served as well as whether such witness statements must be filed.

Law stated - 6 June 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The hearing of a trial in Cyprus is conducted in three stages, being the examination in chief, the cross-examination and the re-examination of a witness.

In civil trials, the general rule is that any fact needed to be proven with evidence by a witness, must be proven during the trial, either with an oral or written statement. Following the examination in chief, a witness may be cross examined on their witness statement by the opposing party.

As regards expert witnesses, the general rule is that the evidence of an expert witness is presented in the form of a written report, unless the court orders otherwise. Then cross-examination will take place with respect to the expert witness' written report.

Law stated - 6 June 2025

Interim remedies

13 | What interim remedies are available?

Cypriot courts have wide powers to issue a range of interim remedies in support of civil proceedings, such as:

- freezing orders, prohibiting the respondent from removing or disposing any assets until the final determination of the action;
- ancillary disclosure orders, disclosing the respondent's assets for the purpose of policing the freezing orders granted;
- search orders, ordering persons in control of premises to allow permit an independent supervising advocate, so that they may search for, inspect and obtain copies of relevant documents;
- Norwich Pharmacal orders, ordering the respondents who are mixed up in a wrongdoing to disclose relevant information to enable the applicant to issue court proceedings against the wrongdoer; and
- Chabra orders, prohibiting and preventing the respondent, who holds assets as a trustee for the defendant, respondent from removing any assets or disposing of any assets until the final determination of the action.

The above interim relief may be granted by the courts when the conditions set out in section 32 of the Courts of Justice Law 1960 are met. The amendment of section 32 of the Courts of Justice Law 1960 in 2023 expanded Cypriot courts' jurisdiction to issue interim relief in the framework of judicial or arbitral proceedings that have been, are being or will be initiated within or outside the jurisdiction of Cyprus.

Law stated - 6 June 2025

Remedies

14 | What substantive remedies are available?

Cypriot courts have wide powers to award all remedies available under common law and the principles of equity. Such remedies include:

- compensatory damages, for the damages sustained by the injured party;
- court orders ordering specific performance;
- declaratory court orders;
- restitutionary damages in equity; and
- exemplary or punitive damages, intended to punish the defendant and deter them from similar conduct in the future.

With respect to the above remedies, interest is usually payable on a monetary judgment as provided by section 34 of the Courts of Justice Law.

Law stated - 6 June 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Pursuant to Part 35 of the new CPR, any party may submit an offer for settlement for the whole or part of a claim, as a 'without prejudice' offer, reserving, however, their right to communicate the terms of the offer to the court, following the issuance of a court judgment.

The procedure for the costs when an offer for settlement is not accepted is as follows.

- When the defendant submits an offer for settlement that is not accepted and (1) in the case of an offer to settle a claim for money or damages, the court awards an amount less than the total amount of the defendant's offer or (2) the court finds that the claimant acted unreasonably in not accepting the defendant's offer, the claimant shall pay any costs incurred by the defendant after the last date on which the offer could have been accepted in accordance with its terms.
- When the claimant submits an offer for settlement that is not accepted and (1) in the case of an offer to settle a claim for money or damages, the court awards an amount equal or greater than the amount of the offer or (2) the court finds that the defendant acted unreasonably in not accepting the claimant's offer, the court may, in exercising its discretion in relation to the question of the award of interest, take into account the defendant's refusal to accept the claimant's offer.

It is noted that offers for settlement may be made outside the scope and framework of Part 35 and will not be subject to the consequences of Part 35.

Law stated - 6 June 2025

Enforcement

- 16** | What means of enforcement are available?

Pursuant to section 14 of the Civil Procedure Law, Cap. 6, any judgment or order of the court ordering the payment of money may be enforced by all or any of the following means:

- by seizure and sale of movable property;
- by sale of or making the judgment a charge on immovable property;
- by sequestration of immovable property;
- by seizure of property in the hands of a third party; and
- by application to examine the judgment debtor and issuing an order for payment instalments.

Additionally in the context of a civil action, pursuant to section 42 of the Courts of Justice Law, the court has the power to compel compliance with a court order by way of a fine or imprisonment or attachment of property. Moreover, the court may award the person in whose interest the order was granted with compensation as the court may consider appropriate.

Law stated - 6 June 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Most court hearings in Cyprus are held in public. However, pursuant to article 30 of the Constitution of Cyprus, the public may be excluded from a trial for reasons of public interest or for the interests of juveniles or for the protection of the private life of parties.

As regards court documents, these are not generally available to the public but only to the parties to the proceedings. A party may apply to the court for permission to inspect the court's file for a specific case, if it can show to the court that it has a legitimate interest in the case.

Law stated - 6 June 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The general rule is that the losing party is ordered by the court to pay the costs of the winning party. When the court issues a costs order, it takes into consideration a number of factors, such as the parties' conduct, whether the winning party succeeded in part of their case, even if not fully successful, as well as any acceptable offer for settlement submitted by a party that had been disclosed to the court and is not an offer in relation to which the consequences of Part 35 apply.

Pursuant to Part 26 of the new CPR, a claimant (and in relation to a counterclaim that is not only in the form of a set-off, a defendant), who is habitually resident outside of the EU or a member state of the EU may, at any stage of the proceedings, be ordered to provide security for costs even though they may be temporarily resident in Cyprus or a member state of the EU.

Law stated - 6 June 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

No win no fee agreements or contingency agreements are not expressly prohibited by the Cyprus Code of Conduct. However, the Code of Conduct provides for general guidelines on how fees should be calculated. In any event, such an agreement is outside the scope of the court rules and specific mentioning must be made on the retainer.

As regards third-party funding, the Cypriot courts have not determined whether this practice is permitted or not. It is noted that a court will not issue a costs order against a third party who is not party in the proceedings, as this would be against public policy principles. That being said, third parties are not entitled to take a share of any proceeds of the claim, and parties may not share the risk of litigation with third parties. This is based on the rules against maintenance and champerty, which aim to prevent any abuse by parties which do not have any legitimate interest in an action. Although the UK courts started to take a more modern approach with respect to maintenance and champerty, Cypriot courts still adopt a narrow approach, stating that any assignment of civil torts are unlawful and against public policy.

Law stated - 6 June 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Section 238 of Law on Insurance and Reinsurance and other Related Matters (Law 38(I)/2016), states that insurance is available for the purpose of covering (1) the loss or damage suffered by the insured person, either through an out-of-court settlement or through civil or criminal proceedings and (2) the defence or representation of the insured person in any legal proceedings of whatever nature brought against such person. Therefore, depending on the insurance agreement that exists between an insurance company and a party to proceedings, insurance may be available to cover all or part of the party's legal costs.

Law stated - 6 June 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Litigants with similar claims may be joined in a single action against the defendant in question. Pursuant to the CPR, where a claimant claims a relief to which another person is jointly entitled with the claimant, all persons jointly entitled to the remedy must be parties to the action, unless the court orders otherwise.

There have not been many class actions in our jurisdiction. There has been one case that involved claims that a factory in the area led to many people in the surroundings getting cancer. Although the case in the first instance was successful, the Supreme Court dismissed it on the merits.

Law stated - 6 June 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Generally, court judgments can be appealed on points of law or fact. The appellant must file a notice of appeal within 42 days of the issuance of a final judgment or within 14 days of the issuance of an interim judgment. Following a reference from the Court of Appeal, the Supreme Court adjudicates on appeals against first instance judgments, on points of utmost public interest or of general public importance, or when there are conflicting judgments on the same point from the court of appeal.

As regards a right of further appeal to the Supreme Court, following a court of appeal's judgment, such right is limited in exceptional circumstances.

Law stated - 6 June 2025

Foreign judgments

- 23** | What procedures exist for recognition and enforcement of foreign judgments?

Regulation (EU) No. 1215/2012 (Brussels I Regulation) is the applicable Regulation with respect to the recognition and enforcement of EU judgments. The Brussels I Regulation consists of a simplified procedure whereby an EU judgment is very easily enforceable in another EU member state without any declaration of enforceability being required.

Additionally, Cyprus has entered into a number of bilateral treaties with other countries, for the mutual recognition and enforcement of judgments. Such treaties exist between Cyprus and Russia, Ukraine, Georgia, Serbia, Belarus, Montenegro, Egypt and Syria.

Moreover, judgments issued in commonwealth countries may be recognised and enforced in accordance with the provisions of the Mutual Recognition of Certain Judgments of the Courts of Commonwealth Countries Law, Cap 10.

If judgments are issued in jurisdictions whereby none of the above provisions of the Brussels I Regulation, bilateral treaties or Cap 10 are available, then if the judgment concerns a definite sum, an action may be brought in common law, on the basis of that judgment.

Law stated - 6 June 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Regulation (EU) 2020/1783 on taking of evidence lays down the rules on cooperation between the courts of different member states in relation to taking of evidence in civil or commercial matters. The Regulation applies in civil and commercial matters where a court of a member state requests (1) the competent court of another member state to take evidence, or (2) the taking of evidence directly in another member state. Such requests shall contain, among others, the requesting and requested court, the details of the parties to the proceedings, the subject matter of the case and a description of the taking of evidence requested.

Moreover, Cyprus is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, aimed at facilitating the transmission and execution of letters of requests to obtain evidence for use in civil proceedings in other jurisdictions.

With respect to requests made by courts of foreign jurisdictions that are not signatories to the Hague Convention, the provisions of Foreign Courts (Evidence) Law (Cap 12) apply.

Law stated - 6 June 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Domestic arbitration in Cyprus is governed by the Arbitration Law, Cap 4 ("Cap 4"), while the legislative framework with respect to international commercial disputes, is International Commercial Arbitration Law 101/1987 (ICA Law). The ICA Law is based on the UNCITRAL Model Law.

Law stated - 6 June 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

For an arbitration agreement to be valid, it must be in writing.

Law stated - 6 June 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

There are no provisions restricting the appointment of an arbitrator. On the contrary, according to the provisions of the ICA Law, the parties are free to determine the number of arbitrators as well as the procedure for their appointment. Unless otherwise agreed by the parties, any arbitrator may be appointed, regardless of their nationality. If the agreement is silent on the matter, the arbitration will be conducted by three arbitrators.

If an arbitration by three arbitrators is provided, each of the parties appoint one arbitrator, and the two arbitrators shall appoint a third arbitrator. If either of the parties fails to appoint an arbitrator within 30 days of receipt of a written request to that effect from the other party, or if the two arbitrators fail to agree on the appointment of a third arbitrator within 30 days of their appointment, the arbitrator shall be appointed by the court at the request of the parties. The same applies when a single arbitrator is appointed.

Moreover, according to the provisions of the ICA Law, the appointment of an arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to the impartiality of the arbitrator's judgment, or independence, or if the arbitrator does not have the qualifications agreed by the parties.

Law stated - 6 June 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

There are no provisions in Cap 4 or the ICA Law limiting the parties' options when choosing an arbitrator. Any restrictions may be made in an arbitration agreement (eg, limiting the parties' options in accordance with the required qualifications of the arbitrator).

Law stated - 6 June 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The ICA Law contains provisions of equal rights and obligations between the parties to the arbitration procedure. Nonetheless, parties may freely determine how the arbitration procedure shall be conducted.

Law stated - 6 June 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Courts may intervene in the appointment of arbitrators at the request of a party. Additionally, the courts can support the arbitral process for the taking of evidence, or they can issue protective measures before or during the arbitration process.

Law stated - 6 June 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

In 2024, a notable legislative reform of the ICA Law took place. One of the most significant amendments in the ICA Law, is the amendment of section 17, with a new Part (IV), which essentially provides for a clear framework for the issuance of interim relief by the arbitral tribunal.

Pursuant to the provisions of the ICA Law, unless the parties agree to the contrary, the arbitral tribunal may, at the request of one of the parties grant an interim relief. An interim relief measure can take any form, by which at any time before the final award is made, the tribunal may order one of the parties to:

- maintain the status quo until the final determination of the dispute;
- take such action or deter the taking of action that is likely to cause immediate or imminent damage or affect the arbitral proceedings;
- ensure the preservation of assets from which a final award may be satisfied; or
- preserve evidence that may be relevant and material to the resolution of the dispute.

Law stated - 6 June 2025

Award

32 | When and in what form must the award be delivered?

The arbitral award is issued in writing and is signed by the arbitral tribunal. The award must be fully reasoned, unless otherwise agreed by the parties or unless an award is issued on

the basis of settlement between the parties. The arbitral award shall state the date of its issuance as well as the place of arbitration. The place of delivery of the award is the place where the arbitration was held. Finally, a copy of the arbitral award, signed by the tribunal, shall be delivered to each of the parties.

Law stated - 6 June 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

In accordance with the provisions of Cap 4, if an arbitrator has displayed misconduct or has conducted the arbitration improperly, the court may annul the arbitral award.

According to section 34 of the ICA Law, an arbitral award may be annulled on the following grounds

- if parties lack legal capacity to contract;
- invalidity of the agreement;
- failure to notify a party of the appointment of the arbitrator or conduct of arbitration proceedings;
- the arbitral award refers to a dispute not foreseen or not falling within the terms of the agreement;
- the constitution of the arbitral tribunal or conduct of the arbitral proceedings was made in violation of the agreement between the parties;
- the subject matter of the dispute is not amenable to arbitration; or
- the arbitral award is contrary to the public policy.

Law stated - 6 June 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The provisions of recognition and enforcement of foreign and domestic awards are set out in the ICA Law as well as in article IV of the New York Convention, to which Cyprus is a signatory.

According to section 35 of the ICA Law, the arbitral award, irrespective of the country in which it has been issued, shall be recognised as binding. Following a written application by any of the parties, the court issues an order for the enforcement of the arbitral award. The party invoking the arbitral award or requesting its enforcement shall file with the court a duly authenticated original or certified copy of the arbitral award. In case the arbitral award is not in the official language of the Republic of Cyprus, the court may request the party requesting its enforcement to produce a translation in an official language of the Republic.

Law stated - 6 June 2025

Costs

35 | Can a successful party recover its costs?

There are no specific provisions stipulating the method of calculating costs under the ICA Law. The costs are dealt with by the arbitral tribunal but the general rule is that the costs are awarded in favour of the winning party. Generally, the parties to the arbitration will cover their costs, and an arbitral tribunal will not issue a costs order against a third party who is not party in the arbitration proceedings.

Law stated - 6 June 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The types of ADR commonly available in Cyprus are mediation and arbitration. Usually, high-value construction disputes end up in arbitration proceedings, given that the arbitration procedure is quicker and allowed for the parties to proceed with the construction of various projects without undue delays.

With the introduction of the new CPR, it is expected that parties will be encouraged to enter ADR negotiations prior to filing an action.

Law stated - 6 June 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Pursuant to the new CPR once the pre-action protocol procedure is followed by each of the parties in a dispute, and the dispute remains unsolved, then the parties are obliged to enter, without delay in negotiations with the aim of settling the dispute and avoid court proceedings. If they don't, this may be taken into account by the court and issue costs against the non-complying party.

As regards parties to arbitration, arbitration agreements usually contain provisions setting out the scope of dispute resolution procedures when a dispute arises.

Law stated - 6 June 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

Law stated - 6 June 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

A landmark judgment of the Supreme Constitutional Court was issued in September 2024, concerning the Attorney General's application to dismiss the Auditor General, due to 'improper conduct'. This is the first judgment of the Supreme Constitutional Court to have dealt with the matter of dismissal of a highest-ranked government official. The Supreme Constitutional Court, in a judgment exceeding 200 pages, decided that the Auditor General must be dismissed for showing improper conduct, violating 'the utmost limits' and behaving 'far below the expected level of his position'. The Supreme Constitutional Court stated that an officer who acts without understanding the limits of his authority, without respect for state institutions, with lack of discernment, is incapable of continuing to perform his duties, noting that 'moderation, impartiality, objectivity, consistency, self-control and self-limitation are essential components of the ability to perform the duties of a state officer of the level and responsibilities of the Auditor General'.

In January 2025, the Council of Ministers of the Republic of Cyprus approved the Certain Matters of Mediation in Civil Disputes (Amending) Law 2025 bill that introduces mandatory participation in mediation, before proceeding with the filing of any legal claim, for civil disputes up to €10,000. This is a step in the right direction, as alternative dispute resolution methods must be embedded in the Cypriot legal culture, as a prerequisite for an effective justice system and as a way to reduce the filing of unnecessary claims in courts, promoting efficiency and administration of justice.

Law stated - 6 June 2025



GZG

Andri Mitsigga

Phoebe Papageorgi

andri.mitsigga@gzg.com.cy

phoebe.papageorgi@gzg.com.cy

George Z Georgiou & Associates LLC

[Read more from this firm on Lexology](#)

Denmark

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Danish courts are composed of the Supreme Court, two high courts, the Maritime and Commercial Court, the Land Registration Court, 24 district courts, the Appeals Permission Board, the Special Court of Indictment and Revision, the Danish Judicial Appointments Council and the Danish Court Administration.

The courts are governed by the Danish Administration of Justice Act. They do not have specialised subject matters. The district courts, high courts and the Supreme Court handle all types of cases, but certain cases may be handled by a department within the courts that has specific knowledge of that type of case. Further, it is possible in a first instance case that the court may decide that the court, at the main hearing, must be acceded by two expert lay judges, whose expertise is deemed to be of importance to the case. Certain requirements must be fulfilled.

The high courts and district courts

As a main rule, cases commence in the district courts, which are each situated in their judicial district in Denmark. On very few occasions, cases may start in one of the two high courts (western or eastern), if the subject matter of the case is of general public importance and the case is considered to be of principal nature, so an appeal is made to the Supreme Court.

The general rule is that a case can be tried in two instances. When a case is appealed from a district court to a high court, it is possible for the high court to dismiss an appeal, if there is no prospect of the court reaching a different verdict than the district court and the appeal does not concern fundamental legal questions, or where no other general reasons exist in favour of hearing the case before the high court.

Appeals allowed by the Danish Appeals Permission Board cannot be dismissed by the high courts. If the case started before the district court concerns a matter of general public importance or of principal nature, it may be appealed twice. It is also possible to have the Supreme Court hear the case, as a third instance, if this is permitted by the Danish Appeals Permission Board.

The district courts will be presided over by at least one judge and the high courts by at least three judges.

The district courts have different subdivisions according to subject matter, such as the housing court, the probate and bankruptcy courts and the bailiff's court.

Small claims of a principal amount not exceeding 100,000 kroner are decided by the district court under simplified procedural rules, which aims to accelerate the process and extend the general availability of the courts to the public.

The Supreme Court

The Supreme Court is the court of highest instance in the legal system. Through its rulings, the Supreme Court mainly determines the guidelines for processing similar cases in the district courts and the high courts.

The Supreme Court will be presided over by at least five judges.

The Maritime and Commercial Court and others

The Maritime and Commercial Court decides on cases concerning maritime and commercial matters with an international trade aspect or international parties, or both. Further, cases concerning the Danish Trade Marks Act, the Danish Design Act, the Danish Marketing Practices Act and the Danish Competition Act are heard by the Maritime and Commercial Court. In addition, the bankruptcy division of the Maritime and Commercial Court hears cases concerning bankruptcy, suspension of payments, compulsory debt settlement and debt rescheduling arising in the greater Copenhagen area. Decisions from the Maritime and Commercial Court may be appealed directly to the Supreme Court. In addition to the above-mentioned courts, there are also specialist courts, such as the Labour Court, which decides cases involving matters between employers' organisations and trade unions.

Law stated - 29 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The system is based on the adversarial approach, where judges have a passive role and are only to judge based on the facts and evidence presented by the parties in court during the proceeding. It is not possible for the court to render a decision based on evidence that has not been presented by the parties. Besides delivering judgment, judges also head the trial and oversee the process. During witness testimony, judges can question the witnesses.

Judges are obliged to guide a party who is not legally represented when needed. This guidance covers only procedural issues and does not include legal advice regarding the merits of the case. In small claims cases under 100,000 kroner the guidance of the judge is extended to also consider the merits, to accelerate the process.

Juries are only involved in some types of criminal cases and not in civil law proceedings.

It is a possibility in some cases to use expert lay judges if the case calls for specific knowledge and if the courts find it relevant. Such a request must be made within a brief period of time after the initiation of the case, and no later than at the pretrial hearing, as a request otherwise is most likely to fail.

The selection process for the judges is handled by the Judicial Appointment Council, an independent council with the task of submitting recommendations to the Minister of Justice regarding the appointment of judicial posts. It follows from article 43 of the Administration of Justice Act that recruitment is based on an overall assessment of the candidates' qualifications for the post in question. This will place a decisive emphasis on the applicants'

legal and personal qualifications. The breadth of the applicants' legal basis of experience must also be emphasised, and it should be included in the assessment that judges should have different legal backgrounds.

Law stated - 29 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

As a main rule, there are no specific time limits for bringing civil claims under the Administration of Justice Act, and all claims can be brought before the court, if the claim itself has not ceased to exist (eg, because of the lapse of a time-limitation period or inactivity in the form of estoppel).

The limitation period for monetary claims is determined in the Danish Limitation Act (Chapters 3 to 4), and is, as a main rule, three years although it may be extended to 10 years. The limitation period begins at the earliest time when the claim could be made. The 10-year limitation period requires a judgment, written confirmation with acknowledgment of claim. A written notice or dunning letter is not sufficient to bring the three-year limitation period to stop, as this requires legal action or confirmation from the debtor.

Parties are free to agree to suspend the limitation period if the agreement is regarding an identified claim and after limitation has begun to run. A general waiver of the limitation periods is not possible under Danish law.

In some specific cases, a time limit exists if the lawsuit follows a decision by an administrative board or a special tribunal. Examples include decisions made by a municipality's rental board. Such decisions must be brought before the courts no later than four weeks after the decision was made. A similar time limit of eight weeks applies for decisions made by the Public Procurement Board before the courts. If the deadline expires, the decision of the administrative board is final. Other examples exist in Danish law.

The courts will not ex officio try the above limitations when the case is filed. A party who has a case filed against them beyond any time limit must raise the issue in their first written reply in the dispute. The matter may then be subject to a separate formality proceeding at the sole discretion of the courts.

Law stated - 29 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

As a main rule, there are no definite pre-action considerations to be considered before commencing proceedings by filing a writ of summons with the court.

An exception to the main rule is monetary collection claims. As a pre-action consideration, the claimant must submit a demand by letter to the debtor with a deadline for payment of

at least 10 days and information that further costs will be imposed if payment is not made. If the requirement is not fulfilled there will be a cost issue, as the creditor will not be able to claim full costs of the case. Further, in cases for collection of rent, there is a special requirement involving the notice given to the tenant.

The parties may request the court to assist with a pretrial expert opinion before filing a claim. These opinions will be allowed to be presented to the court in a later trial regarding the merits of the dispute. The option is relevant in many situations where there is a special need to secure evidence for the claim. This could be in situations where the object of the expert opinion (eg, perishable goods) may not exist when the actual trial takes place.

Law stated - 29 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Proceedings are commenced by handing in a writ of summons stating the claim, the factual aspects of the dispute, the legal arguments, evidence and suggestions from the claimant as to the form of the proceedings in court (the number of judges, expert lay judges, etc). Also included are the exhibits on which the case is to be based. The writ of summons must be handed in via an online platform provided by the Danish Courts Administration.

The plaintiff must at the same time transfer a court fee, the size of which is based on the claim. For cases with a financial value of no more than 100,000 Dkroner, the basic amount is 750 DKK. For cases with a financial value over 100,000 kroner, the basic amount is 1,500 kroner. If the fee is not paid, the case will be dismissed.

The writ of summons is then served on the defendant digitally; however, this requires the defendant to sign off digitally. If the defendant does not sign off digitally, the writ is served by a judicial officer. This must be done in person to the defendant or to a member of their household. If the defendant is not a person, it must be served on the head of the legal entity or on an authorised staff member. It is possible for the court to make use of different serving mechanisms, hereunder letters, telephone notices, digital communications and personal notifications.

The process is handled by the court. After the writ of summons has been served, the defendant is granted at least two weeks to submit the defence. The court informs the parties via the digital platform, which therefore is simultaneous.

For small claims of a principal amount not exceeding 100,000 kroner the process is significantly simplified. For all claims under 100,000 kroner utilising the simplified claims process, the fee is a one-time payment of 750 kroner.

When the case is scheduled to be heard at the final hearing and has a monetary value above 100,000 kroner, a second court fee (arraignment fee) is to be paid. This fee is due three months before the oral hearing and depends on the value of the claim. The higher the financial value of the case, the higher the fee. The minimum fee is 3,000 . This applies

to claims with a value up to 250,000 kroner. The maximum fee is 160,000 kroner, which apply to claims with a value of more than 6 million kroner. The intermediate intervals (and fees for special types of cases) can be seen on the courts' website: [Danmarks Domstole - Retsafgifter](#). If the fee is not paid, the case will be dismissed.

The courts monitor their capacity and aim to handle all cases within the shortest period. In situations where there is a capacity problem, the courts have usually recruited more judges or referred the cases to other venues. There is currently no issue regarding the capacity of the Danish courts.

Law stated - 29 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Civil claims begin with the plaintiff filing a writ of summons in the court of jurisdiction via the digital platform. The court will then serve the writ on the defendant. From the time of service of the writ of summons, the defendant normally has two weeks to file a statement of defence. Any deadlines are clearly stated when viewing the case on the digital platform.

If a petition for extension is not filed, the defendant shall state their defence in a reply within two weeks. Following this initial upload of documents to the digital platform, the parties may upload further written replies and rejoinders. The courts oversee this process and set appropriate deadlines for these replies, taking the specific situation into account. Typically, a party is given a deadline of four weeks. This may be extended at the request of the party if valid reason for such request persists.

The courts may also offer the parties court-based mediation. For further information see the Danish Administration of Justice Act (Chapter 27). Participation in mediation is voluntary and requires the acceptance of both parties. Should one party turn down the offer, this will not harm the party in a subsequent court case.

If deadlines are not met, the court might decide to render a default judgment or decide on issues to the detriment of the party breaching the deadline.

When the initial documents and arguments are exchanged, the court may call the parties to a pretrial hearing during which the parties are to discuss the legal and factual conditions of the case. The rest of the procedure is also to be scheduled, including the date for the hearing of the case. It is intended that specific requests for evidence, hereunder expert opinions, are to be handled at this meeting.

The parties are usually free to produce more arguments and evidence up to eight weeks before the scheduled hearing.

In most cases, the court will ask for a case summary. This document specifies legal arguments and production of evidence, including a list of witnesses. Typically, the summary shall be delivered no later than two weeks before the case is heard.

Following the hearing, the court has up to four weeks in the district court, and eight weeks in the high courts, to deliver the ruling. The ruling is given in writing, and must contain a

short summary of the proceedings and the arguments on which the court based its ruling. Typically, the arguments are quite short.

Law stated - 29 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Unless otherwise provided in The Administration of Justice Act or other enactments, civil cases are tried in the district court in the first instance. The parties may agree in which of any equally competent courts to institute proceedings, however in legal proceedings concerning consumer agreements, a prior jurisdiction agreement is not binding on the consumer.

If so requested by a party, the district court may transfer a case to the high court if the outcome of the case is of fundamental legal importance and of general importance to the application and development of the law or has significant societal implications in general.

The rules on jurisdiction and competence are located in The Administration of Justice Act chapter 21 (subject-matter jurisdiction) and chapter 22 (territorial jurisdiction). It is not possible to apply for anti-suit orders.

The court must ensure on its own initiative that it has subject-matter jurisdiction over the case, and if the defendant does not object to the court's jurisdiction in the defence or at the preliminary court hearing, the court will be deemed to have jurisdiction.

The ordinary courts deal with most types of claims, so in general they have the necessary subject-matter jurisdiction. However, cases concerning EU trade marks, and cases concerning Community designs, are tried in the Maritime and Commercial Court. Unless otherwise agreed by the parties, the following proceedings may also be instituted in the Maritime and Commercial Court:

(1) International cases where international business knowledge is of significant importance, (2) cases between traders where expertise in transport by road, rail, sea and air is of significant importance, (3) cases where the application of the Trademarks Act, the Collective Marks Act, the Designs Act, the Patents Act, the Utility Models Act, the Act on the Protection of the Topographies of Semiconductor Products, the Plant Variety Protection Act or the regulation of the Copyright Act of rights in works of art or computer programs is of significant importance, (4) cases where the application of the Competition Act is of significant importance, (5) cases between traders where the application of the Marketing Practices Act is of significant importance, and (6) cases between traders where the application of the Trade Secrets Act is of significant importance. Special rules apply if the Consumer Ombudsman is a party.

Claims about rent of a house or room are tried in a housing tribunal (which is part of the district courts).

If the parties have agreed that the dispute must be dealt with by arbitration, the ordinary courts cannot try the case.

Regarding territorial jurisdiction, the general rule is that proceedings must be instituted in the defendant's home court. For companies, associations, private institutions and other collective entities capable of being a party to proceedings, the home court is the court for the judicial district in which the main office is located or, in the absence of information about such main office, one of the members of the board of directors or the executive board is resident.

There are several exceptions to these general rules.

Some of the more relevant exceptions are as follows: (1) That legal proceedings concerning contractual relationships may be instituted in the court for the judicial district in which the obligation giving rise to the claim has been performed or is to be performed (this does not apply to money claims unless the claim arose during a stay in the district under circumstances which would require the claim to be paid before departure from the place), (2) legal proceedings involving a claim for penalty, damages or redress as a result of a legal wrong may be instituted in the court for the judicial district in which the legal wrong was committed, (3) in cases concerning consumer agreements not concluded by enquiry in person at the permanent establishment of the trader, the consumer may institute proceedings against the trader in his own home court and (4) legal proceedings concerning real estate rights may be instituted in the court for the judicial district in which the property is located.

In cases concerning consumer agreements, the consumer may institute proceedings against persons, companies, associations, private institutions and other collective entities whose home court is not in Denmark, in his own home court if the making of a special offer or advertising in Denmark has preceded the conclusion of the agreement and the consumer has made the arrangements necessary for the agreement to be concluded in this country.

The above are examples of the territorial jurisdiction, but other special rules apply for special situations.

If the proceedings are instituted in a court which does not have jurisdiction to hear the case or one of the claims made, the court will transfer the case or claim for adjudication by the competent court, where possible. The decision on transfer is made by order of the court. Where no transfer is available, the case will be dismissed by judgment of the court.

Law stated - 29 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

As a main rule, the parties have the freedom to control the timetable and procedure of the dispute before the court.

The Administration of Justice Act sets out several guidelines to be followed if the parties cannot agree. These also act as default procedures if the parties do not decide on the procedure. If the parties, for example, agree to stay the proceedings because of settlement negotiations or to await a rule in another dispute, the court will accept this.

The only limitation on the parties' autonomy is the courts' obligation to handle proceedings within a reasonable time frame in accordance with the European Convention of Human Rights, article 6.

In practice, the courts will thus not accept extensions, even if agreed between the parties, for unlimited periods of time. If one party has an interest in finalising the dispute, however, the court will then have to enforce one or even several strict deadlines. When deadlines have been set for the submission of pleadings, etc, they must be observed, but a party may ask for an extension of a deadline. It will usually be accommodated. However, it is exceptional that an extension of deadlines related to the preparation of the oral hearing is granted. If the deadlines are not met, this will result in either a default judgment or decisions on factual, formal or evidential issues to the detriment of the party not meeting the deadline.

Law stated - 29 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no general obligation to preserve documents or evidence pending a trial. However, in accordance with legislation concerning bookkeeping and tax, there is an obligation to preserve financial statements and documents for at least five years.

Parties must share documents on which they base their claim or defence. This is part of the presentation of material to the court. This does not include an obligation to submit potentially damaging documents on their own initiative.

If a party believes that the other party is in possession of relevant documents for the claim or defence, the party may ask for an order of discovery of documents. The party asking for such an order must specify the need for the documents and make it plausible that the other party is in possession of the documents. If an order is given and the party fails to produce the documents, this may work to the detriment of the party.

A Danish order for the discovery of specific documents is unlike the Anglo-Saxon regime of discovery.

Law stated - 29 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Certain documents are privileged. This includes documents containing:

- state information from public employees without permission from the relevant authority;

- information that has come to the attention of priests, doctors, defence attorneys, court mediators and attorneys in the exercise of their duties;
- information on persons connected to a party; and
- information on journalists regarding their sources, etc.

Regarding in-house lawyers, the issue is now settled following the *Akzo Nobel/Across* ruling (European Court of Justice C-550-07). The following information from both national and foreign in-house lawyers and advisers can be seen as privileged:

- correspondence exchanged with external legal advisers;
- internal notes reporting the content of a message from or to an independent lawyer; and
- preparatory documents, even if they have not been exchanged with an external lawyer, but only if the company can demonstrate that these documents were created with the sole purpose of seeking legal advice from a lawyer in exercise of the right of defence.

The court has the final decision regarding whether a document is privileged.

Law stated - 29 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

The parties do not normally exchange written evidence prior to the trial. If a case requires an expert opinion, the opinion may be produced pretrial, and it is exchanged prior to the trial, but the obtaining of such involves the court.

There is a possibility to present a unilaterally obtained statement typically from an expert or a witness, which can be acquired by one party alone, without the court's involvement, and without participation or consent from the opposing party. Examples include:

- a medical report obtained by a party;
- a technical assessment from an engineer; and
- a written witness statement or expert opinion.

While such unilateral statements are admissible, they are not automatically given decisive weight, due to concerns that (1) the opposing party has not participated in the preparation, (2) the statement can be seen as less objective than a court-appointed expert opinion and (3) the author cannot be questioned (unless summoned as a witness).

Law stated - 29 May 2025

Evidence – trial

12 How is evidence presented at trial? Do witnesses and experts give oral evidence?

As a main rule, evidence at trial must be given as oral evidence. In second instance cases, the testimony given by the witnesses will be used as a starting point for additional questions for the witness. In cases before the Supreme Court, testimony is presented in a written transcript of the oral testimony before the previous court. If there is a need for additional witness testimony, the Supreme Court must allow for such steps.

Hearings start with the claimant presenting the case, including a recital of the documentary evidence. Written evidence is thus read aloud wholly, or just the relevant parts, at the presentation of the dispute to the court. Afterwards, witness testimony is given with the possibility of cross-examination and questions from the judges. Witnesses are not allowed to be in the courtroom prior to giving testimony.

As a main rule, expert witnesses must also give their statement orally before the court. As part of the expert statement, however, a written statement answering specific questions is usually given by the expert. Therefore, the testimony given by an expert witness will be based on the written statement, which is then reaffirmed before the court. If the parties do not wish to ask additional questions, the expert is not called to give an oral statement, as it would be irrelevant evidence.

Law stated - 29 May 2025

Interim remedies

13 | What interim remedies are available?

As interim remedies, the parties can file for injunctions ordering parties to cease or commence certain actions. Further, the parties may also file for search orders, which requires fulfilment of the requirements in the Administration of Justice Act.

For all interim remedies, the party asking for the measure must prove or make it plausible that the injunction or order shall be filed so as not to further damage the party, and additionally prove or make it plausible that if the injunction or order is not made, the purpose is missed.

Following any interim remedy, a lawsuit must be filed confirming the interim injunction. The deadline for this is two weeks if it involves prohibition of certain actions, and one week with the freezing of assets.

The remedies are fully available to support foreign proceedings if they fulfil the requirements for a national remedy.

In relation to infringement of intellectual property rights, a licensee may request the bailiff's court to initiate investigations for ensuring evidence of an alleged infringement. The party requesting the bailiff's court to initiate such investigation must prove or make it plausible that an infringement has been made and the extent of the infringement (see the Administration of Justice Act, Chapter 57a). The rules according to infringement of intellectual property rights apply mainly to:

- infringement of copyright or related rights;
- violation of design, including Community design;

- infringement of trademarks, including Community trademarks, and collective marks;
- violation of corporate names;
- patent infringements; and
- infringement of utility models.

Following the investigations, a lawsuit must be filed to finally prove the infringement and thereby also the legitimacy of the preliminary securing of evidence. The deadline is four weeks after the bailiff's court announced that the investigations were completed, unless the licensee withdraws the pursuit.

Law stated - 29 May 2025

Remedies

14 | What substantive remedies are available?

The parties have two types of claims available as substantive remedies.

The main one is a claim for damages suffered in the form of a claim for payment, including the payment of a contract price, a reduction in price and damages.

The second remedy is a claim for a party to recognise an obligation to do or not do certain actions, or to recognise the rights of a party.

Parties cannot ask for punitive damages as they may in the Anglo-Saxon legal tradition. Damages are only awarded based on actual losses suffered and proven.

The only exception is if the parties have agreed on a certain penalty clause in a contract. Such a penalty may, however, not exceed what is fair. If it is seen to be unfair it can be declared to be void.

If a claim for interest is made by the party regarding a claim for payment, it can be awarded. On monetary claims, interest is claimed from the filing of the cases until payment is made. If the claim prior to the filing has also incurred interest, this will be calculated until the filing of the case and included in the claim.

Law stated - 29 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

No formal rules apply to settlement discussions, except regarding class actions. Class actions are conducted by a class representative on behalf of the group. Settlements entered into by the class representative on claims covered by the class action become valid when the settlement is approved by the court. The court approves the settlement, unless the

settlement results in unfair discrimination against group members or the settlement is otherwise obviously unreasonable.

Except from class actions the court's approval is not needed.

The parties can discuss a settlement as they wish, and a lawyer may not inform the court of the other party's specific settlement offer.

If the parties agree, it is possible to ask the court for judicial mediation. The rules about judicial mediation is placed in chapter 27 in the Administration of Justice Act.

In that case, the court will put the case on hold and appoint a mediator to assist the parties themselves in reaching an agreed solution to a dispute. The mediator can be either a judge or a lawyer specialising in judicial mediation.

Information that emerges during a judicial mediation is confidential, unless the parties agree otherwise or the information is otherwise publicly available. If no settlement is reached, the court will not be informed of what has been discussed, and will only be informed that no settlement has been reached.

Law stated - 29 May 2025

Enforcement

16 | What means of enforcement are available?

If court decisions are neglected or disobeyed regarding payment and actions, the party making the claim may have it enforced through the bailiff's court, which has the right to use necessary force. The bailiff can execute a levy against the debtor's property or place the creditor in the possession of specific items, including real property.

A claim for payment is, as a main rule, enforceable two weeks after the judgment is made, if the decision has not already been appealed.

Law stated - 29 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

The information that a party in a civil case wants the court to consider must also be available to the other party.

Court hearings are generally open to the public and only limited by the physical limitations of the actual courtroom. In exceptional circumstances, the court may decide that only parties to the case may attend the hearing. For example, cases involving divorce or legal separation are never held in public. Aside from this, it would be rare for court proceedings to be closed to the public.

Anyone is free to review the conclusion of a judgment if a request is made within one week of the judgment being delivered. Typically, only the conclusion of the ruling is made available to the public. However, for a small fee it is possible to ask the court to obtain a copy of judgments and rulings as well as decisions on court costs in civil cases.

Court replies, pleadings and written evidence are generally not available, but anyone who has an individual, significant interest in a specific legal issue can request to be made aware of documents relating to a civil case or a criminal case, including entries in the court registers, to the extent that the documents are important for the assessment of the relevant legal issue.

The Administration of Justice Act does also have different rules about access to documents that apply in specific situations. These rules are placed in Chapter 3 a.

Law stated - 29 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

As part of any ruling, the court will decide on the matter of costs.

The awarding of costs is based primarily on the value of the dispute. The court will consider, among other things, the amount of time spent during pretrial hearings and during the final hearing, the complexity of the case, and the extent and inclusion of experts.

The high courts have produced a memorandum containing guidelines and fee bands for civil cases, which the district courts adhere to. The memorandum can be found on the courts' webpage. Decisions on costs may be appealed separately without appealing on the merits of the case, as long as the decision regards an amount higher than 50,000 kroner. If the amount is at or below that amount, it would be necessary to apply for a permission to appeal the cost issues. Such an application would have to be made within two weeks of the decision.

Security need not – as a general rule – be provided for the defendant's cost. If the claimant is a foreign national from outside the European Union, the court may require that the claimant post security for the potential costs of the defendant, if the defendant demands this in its defence statement. Further, a narrow exception is applicable if the claimant is a company with limited liability and considered to have been potentially established to avoid paying cost if the case is lost. In that situation, the court could decide that security must be provided. The amount of a potential security for a claimant from outside the European Union is estimated and decided by the court. The court uses the memorandum containing guidelines and fee bands for civil cases. For claims above 5 million kroner, the court calculates the security with 46,340 kroner until the first million and 3 per cent of the rest. According to cases with significant economic values, the courts have earlier reduced the costs by one-third of the costs according to the memorandum containing guidelines and fee bands for civil cases. The determination of the legal costs will be based on the nature and scope of the case. In

case law the courts have reduced legal costs from 28 million kroner to 10 million kroner, leaving room for an individual assessment.

In general, the amount of costs awarded in civil disputes does not cover the actual costs incurred by the parties, which is known in other legal territories. Even a successful party must thus expect to pay additional costs in larger disputes.

There are no new rules on the question of cost, but the topic is, as always, discussed by lawyers.

Law stated - 29 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

As a rule, lawyers may not claim a fee that is larger than that which is fair in relation to the case, taking into consideration the importance of the claim to the client, the size of the claim and the nature and amount of work that has been included. This is based on the principle in article 126(2) of the Administration of Justice Act.

If the fee is seen as fair, the lawyer is allowed to make any fee agreement they wish. This will include monetary success fees of all types. The only limitation is that a lawyer may not receive a fixed part or percentage of an award given. It is naturally possible to agree on 'no cure, no pay' for cases.

Agreements regarding third-party funding are possible.

Litigation funding is beginning to have more progress in the Danish court. In a new verdict from the High Court, a parent company funded its subsidiary's legal costs in a case against the Danish Business Authority. The subsidiary company lost the case and then the parent company was responsible for the payment of the costs to the Danish Business Authority. A third party that provides financing for litigation may therefore potentially incur liability for the payment of legal costs to the counterparty under the fulfilment of certain requirements, hereunder taking into consideration the cost in regard to the specific litigation.

In bankruptcy estates, litigation funding has been approved, as a tool, and can therefore be used.

Factoring is more commonly used, where the claim is sold to a professional party.

Law stated - 29 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Insurance is available and quite common. Insurance will usually cover the legal expenses of the policyholder and the legal costs awarded to the opponent.

Most insurance is subject to maximum coverage and self-excess. Further, the costs covered are usually limited to the costs awarded by the court. If additional costs are incurred, the policyholder must bear these costs. Insurance is available to both private individuals and commercial entities.

Law stated - 29 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Denmark introduced the possibility of class actions in 2008. According to the Administration of Justice Act, section 254b, subsection 1, a class action may be brought when:

- several persons have uniform claims against the same individual or entity: see section 254a;
- all claims have jurisdiction in Denmark;
- the court has jurisdiction over one of the claims;
- the court has subject-matter jurisdiction regarding one of the claims;
- class action is deemed to be the best way of dealing with the claims;
- the class action members may be identified and informed about the case in a suitable manner; and
- a representative for the class action may be appointed: see section 254c.

In a new decision, the High Court deemed under which circumstances several individual persons have uniform claims in accordance with the potential responsibility for a prospectus in connection with a public offering. According to this ruling, uniformity based on responsibility for a prospectus is when:

- the person has bought the shares of their own account and risk at the time of the initial public offering or closely related to the initial public offering;
- the person was in possession of the shares at the date of the bankruptcy; and
- the person had jurisdiction in Denmark, when the company went bankrupt.

Class actions require that the class representative can argue that the conditions above are fulfilled and that each member of the class also fulfils the requirements.

A class action is conducted by a representative appointed by the court on behalf of the class. The system is based on the opt-in principle, contrary to the opt-out principle known in the United States. Only the parties who have signed up and actively joined the lawsuit are included.

Further, parties with similar claims or multiple claims between parties (or their affiliated entities) may be handled during the same proceedings. This is a way of limiting the litigation costs. Each dispute will result in a separate ruling.

There are no developments in the procedural rules for class actions, but more class actions are being filed.

Law stated - 29 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

As a main rule, judgments in civil cases may be appealed once to the court of instance one above. Judgments made by the district courts may be appealed to the high courts, and judgments made by the high courts and the Maritime and Commercial Court as court of first instance may be appealed to the Supreme Court; however, the Supreme Court can reject an appeal, and the party may then file an appeal at the High Court.

The high courts have access to reject appeals, regardless of the economic value, unless the parties have indicated conditions that make it likely that the case may have a different outcome than in the district court.

Parties appealing judgments involving claims of under 50,000 kroner must obtain a special permit from the Appeals Permission Board to appeal.

Appeal from the district courts to the high courts must be done within four weeks of the judgment being given or from the time where the Appeals Permission Board approved the application for an appeal. The same rules apply to appeals from the high courts to the Supreme Court.

A default judgment cannot be appealed, although the case can be reopened if a request is made within four weeks and in special circumstances up to one year after the judgment.

Permission for a second appeal may, upon application, be given by the Appeals Permission Board. The permission is only given in special circumstances and if the case deals with matters of importance and principle.

Law stated - 29 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

A foreign ruling will be recognised and enforced in Denmark if either a convention or national Danish rules granting recognition provides for recognition. The Minister of Justice has been authorised by the Administration of Justice Act, sections 223a and 479, to implement regulations regarding granting recognition and enforceability. The authorisation

has, however, never been exercised by the Minister of Justice, and the recognition of foreign civil judgments is, therefore, currently only regulated by international treaties and conventions.

A judgment from a country within the European Union (or EFTA) is, as a main rule, enforceable in Denmark. (See article 33 of the Brussels I Regulation, which lays down rules governing the jurisdiction of courts and the recognition and enforcement of judgments in civil and commercial matters in EU member states.) Denmark has not entered the Brussels II regulation regarding jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. This is why a judgment from a country within the European Union based on matrimonial matters, etc, is not enforceable in Denmark.

Denmark is also a signatory of the Lugano Convention, which came into effect in Denmark on 1 March 1996. The Lugano Convention extends the sphere of mutual recognition and enforcement of civil judgments beyond the borders of the EU, encompassing six of the then-seven member states of EFTA (Austria, Finland, Iceland, Norway, Sweden and Switzerland, explicitly excluding the then-seventh member, Liechtenstein). As is the case with the Brussels I Regulation, the Lugano Convention solely regulates the recognition and enforcement of civil judgments among EU member states and three of the four member states of EFTA; namely, Iceland, Norway and Switzerland.

Between the Nordic countries, recognition is regulated by the Nordic Convention on the Recognition of Civil Judgments of 1933.

If a reciprocal agreement does not exist, a judgment issued in a country outside of the EU or EFTA will, as a main rule, not be enforceable in Denmark.

There are also specific conventions relating to, inter alia, family law, succession law and bankruptcy.

Law stated - 29 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Denmark is a party to the 1970 Hague Convention on the Collection of Evidence Abroad in Civil or Commercial Matters, through which courts in other ratifying states may request evidence taken in Denmark. The rules apply if a formal request is made by a foreign court.

Law stated - 29 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Act of 2005 is primarily based on the UNCITRAL Model Law of 1985 with some differences. For example, there are no formal requirements to an arbitration agreement in section 7 of the Arbitration Act. Further, it should be mentioned that the Arbitration Act has not been updated with regard to the 2006 amendments of the UNCITRAL Model Law.

Law stated - 29 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Parties may enter into an arbitration agreement both before and after a dispute has arisen. There is no in-writing requirement under the Arbitration Act; however, there might be *lex specialis* laws that require otherwise, such as the Merchant Shipping Act. Arbitration agreements are not valid in contracts with consumers.

Further, under the New York Convention of 1958, there is an in-writing requirement. Arbitration agreements entered into in Denmark thus need to be in writing to be enforced under several other jurisdictions.

Arbitration agreements in the event of bankruptcy may raise the question under which circumstances the arbitration agreement is valid, when a party goes bankrupt and the bankruptcy estate does not enter into the agreement containing the arbitration clause. Arbitration agreements that regulate bankruptcy, clawback claims, retention of title and offsetting, are not considered valid against a bankruptcy estate.

In case law, the High Court decided whether an arbitration agreement was binding on a bankruptcy estate that charged outstanding invoice claims without the estate having entered into an mutual agreement with the counterparty.

The High Court found that a bankruptcy estate is not bound by the arbitration agreement entered into prior to the bankruptcy if the dispute concerns clawback claims, retention of title or offsetting. If, on the other hand, the dispute is independent of the bankruptcy because the claim is based on the rules on deficiencies, then an arbitration agreement entered into prior to the bankruptcy is binding on the bankruptcy estate regardless of whether the bankruptcy estate has not entered the agreement.

Law stated - 29 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The parties are free to determine the number of arbitrators. If no agreement has been reached, arbitration will consist of three arbitrators (see section 10, subsection 2 of the

Arbitration Act). If the parties have agreed upon institutional arbitration, the number of arbitrators will be determined by the chosen institution.

If the parties have not agreed upon the appointment of arbitrators, as a main rule each party appoints one arbitrator within 30 days of having received a request from the opposing party. The two party-appointed arbitrators thereafter appoint the chair within 30 days of being appointed (see section 11, subsection 2 of the Arbitration Act). If the party-appointed arbitrators cannot agree upon the chair, each of the parties may request that the national courts appoint the remaining arbitrator or arbitrators (section 11, subsection 3).

The appointment of an arbitrator may only be challenged if circumstances exist that give probable cause to believe that the arbitrator is not impartial or independent, or if the arbitrator does not possess the qualifications to which the parties have agreed (section 12, subsection 2 of the Arbitration Act).

Further, a party cannot challenge the appointment of its party-appointed arbitrator if the grounds for doing so were known at the time of appointing the arbitrator.

Law stated - 29 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The number of arbitrators and the qualifications depend on the arbitration institution designated in the arbitral clause. The Danish Institute of Arbitration handles cases of all subject matters and has a pool of candidates, which is deemed sufficient to meet the needs of complex arbitration. It could be considered that Denmark is a small jurisdiction, which could potentially lead to difficulties in finding qualified arbitrators. This is not the case.

Law stated - 29 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Under the Arbitration Act, the only mandatory provisions in regard to the procedure are that each party shall be treated equally and that each party shall be given full opportunity to present its case (see section 18 of the Arbitration Act).

Law stated - 29 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

As a general rule, the court has no competence in disputes that are to be settled by arbitration (see section 4 of the Arbitration Act). However, there are exceptions in the Act.

If requested by a party, the court may implement interim remedies or enforcement, even though according to the agreement the dispute is to be settled by arbitration (see section 9).

Further, the court may intervene in matters of appointing arbitrators (see section 11, subsection 3), objections against the arbitrator (section 13, subsection 3) or the competence of the tribunal (see section 16, subsection 3), or orders as to costs (section 34, subsection 3).

Regarding the arbitration award, the court may set aside the award in accordance with the rules in section 37, subsection 2-4; for example, if the dispute, owing to its nature, cannot be settled by arbitration.

Law stated - 29 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes. At the request of a party, the arbitrators have the power to grant interim relief (section 17 of the Arbitration Act). However, the arbitrators cannot enforce it. For a party to enforce interim relief, a request must be submitted to the national courts, which thereafter will hear the dispute on that matter.

The fact that the dispute according to the parties' agreement should be settled by arbitration does not bar the national courts from hearing the dispute regarding interim relief (see section 9 of the Arbitration Act). Consequently, a party may obtain a freezing order or an injunction in accordance with the provisions of the Danish Administration of Justice Act.

Moreover, a party may also be granted an order of enforcement, providing that the conditions under the Danish Administration of Justice Act are met.

Law stated - 29 May 2025

Award

32 | When and in what form must the award be delivered?

The award is to be made in writing and is to be signed by the arbitrator or the arbitrators (see section 31 of the Arbitration Act). Further, it must state the date and the place of arbitration. Lastly, after the award has been made, a copy is to be signed by the arbitrators and delivered to each party.

The time limit for receiving the copy is primarily relevant with regard to section 33, concerning corrections of errors in computation, typographical errors, etc, within 30 days.

Moreover, each party may, unless otherwise agreed within 30 days after receiving the award, request that the tribunal issue additional awards regarding claims presented during the proceedings (see section 33, subsection 3).

Law stated - 29 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An arbitral award is final and cannot be appealed to the court. The national court enforces the award; however, pursuant to section 37 of the Arbitration Act, an award may be rendered unenforceable if certain conditions are met (eg, if the tribunal was not competent in accordance with the arbitration agreement). Section 37 of the Arbitration Act is, with few alterations, an adoption of article 34 of the UNCITRAL Model Law.

Additionally, an award may be set aside if a court finds that the subject matter of the dispute is not eligible for settlement by arbitration, or if the award is manifestly contrary to public policy in Denmark.

Law stated - 29 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Denmark is party to the New York Convention of 1958. The rules of enforcement of foreign awards have been adopted into the Arbitration Act and, pursuant to section 38, both Danish and foreign arbitration awards are enforceable in Denmark. Awards from states not party to the New York Convention of 1958 are also enforceable in Denmark (see section 38 of the Arbitration Act).

A request for enforcement shall be sent to the court governing the jurisdiction where the party in breach has their residence or place of business. The request shall be in writing and include a duly certified copy of the award and of the arbitration agreement, if it is in writing.

If the award is not in Danish, the court will require a duly certified Danish translation.

The bailiff's court may refuse enforcement if one of the conditions mentioned in section 39 of the Arbitration Act is met; this section is based on article 36 of the UNCITRAL Model Law.

There are no changes in the options regarding enforcement.

Law stated - 29 May 2025

Costs

35 | Can a successful party recover its costs?

Rules about costs are governed by the Arbitration Act, part 7. The parties are jointly and severally liable for the costs of the arbitration tribunal (see section 34, subsection 2 of the Arbitration Act). The arbitration tribunal will allocate the costs to the parties and may choose to award one of the parties some or all of the costs (see section 35).

Law stated - 29 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The commonly used types of ADR are mediation and court-based mediation. To solve a dispute by regular mediation, the parties are brought together using a non-court-based mediator. The mediator is commonly an attorney at law who is educated as a mediator, and the mediator helps the parties to negotiate and find a solution to the conflict. If the parties can find a solution, the mediator will draft the agreement.

The court-based mediation is voluntary and an alternative to dispute resolution in court. The parties have to agree to try to resolve the conflict in court-based mediation. The process is led by a judge or an attorney at law and the 'mediator' does not decide the case, but instead helps the parties find a solution to the conflict that they can agree on.

The claimant must pay a fee based on the value of the case, but the assistance from the mediator is free.

The court must decide whether a case may be conciliated and only if the court assumes the result would be negative may it abstain from conciliation.

Law stated - 29 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There are no requirements for the parties to consider ADR before or during proceedings. Neither a court nor a tribunal is able to compel the parties to participate in ADR proceedings.

If the parties want to participate in court-based mediation, it is required that: a subpoena is filed; both parties agree to resolve the dispute by court-based mediation; and the court assesses that the case is suitable for court-based mediation.

Law stated - 29 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The Danish Administration of Justice Act has been revised to include a new provision allowing the court to convene a special hearing to determine whether a case should be referred to court mediation.

Law stated - 29 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Not at present.

Law stated - 29 May 2025



Morten Schwartz Nielsen
Kristian Ambjørn-Buus Nielsen

msn@les.dk
kbn@les.dk

Lund Elmer Sandager

[Read more from this firm on Lexology](#)

Egypt

Frederic Soliman, Aleyeldine Fahmy

Soliman, Hashish & Partners

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ALTERNATIVE DISPUTE RESOLUTION

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UPDATE AND TRENDS

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LITIGATION

Court system

1 | What is the structure of the civil court system?

As per Law No. 13 of 1968, as amended by Law No. 157 of 2024 (the Civil Procedures Code), the civil court system in Egypt is divided into three main types of courts.

- First Instance Courts comprise the District Courts and the Preliminary Courts.
 - District Courts are composed of one judge and render first instance judgments in civil and commercial claims with a value not exceeding 200,000 pounds as well as other specific claims. Moreover, the doctrine of *res judicata* shall apply to judgments made by district courts with regard to claims with a total value not exceeding 30,000 pounds, meaning that these judgments may not be appealed.
 - Preliminary Courts are composed of at least three judges and render judgments at first instance in civil and commercial claims that exceed the scope of the district courts. Preliminary Courts also render judgments in the appealed judgments issued by the district courts. Moreover, the doctrine of *res judicata* shall apply to judgments made by Preliminary Courts with regard to claims with a total value not exceeding 200,000 pounds, meaning that these judgments may not be appealed. Preliminary Courts also have jurisdictions to rule over urgent matters.
- Courts of Appeal, composed of at least three judges, are responsible for rendering judgments related to appeals that were settled by Preliminary Courts.
- The Court of Cassation – parties to a dispute may appeal before the Court of Cassation against judgments issued by the courts of appeal if the value of the claim exceeds 500,000 pounds in the following cases: (1) if the appealed judgment is based on a violation of the law or an error in its application or interpretation; and (2) if the judgment is invalid or the procedures are invalid, which affects said judgment.

All courts usually have circuits according to subject matter (ie, lease, compensation and proof of signature).

Further, the legislator introduced Economic Courts with L. 120 of 2008 (the Economic Courts Law). The Economic Courts are a special type of court that exclusively renders judgments in commercial claims and in criminal cases concerning specific economic laws (eg, the Companies Law, the Financial Lease Law, the Central Bank Law and the Telecommunication Law).

Law stated - 25 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The role of the judge in District Courts, Preliminary Courts and Courts of Appeal shall include, mainly, the following:

- review the submitted claims, the defences and the documents submitted by the parties;
- ensure the court's competence;
- ensure that the procedural requirements and conditions are satisfied; and
- render a judgment for each claim.

Further, the Egyptian judicial system does not apply the jury system.

Law stated - 25 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

As per article 374 of Law No. 131 of 1948 (the Civil Code), the general time limit for bringing civil claims shall be 15 years from the date on which the right is due to the creditor of said right.

However, there are exceptions to the aforementioned general time limit that may reduce the applicable time limit to five or even three years in some cases. These exceptions include –inter alia – the following.

- As per article 375 of the Civil Code, every recurring claims or rights shall expire after five years, even if acknowledged by the debtor, such as rent for buildings and agricultural lands, interest, fixed revenues, gifts, wages and pensions.
- As per article 376 of the Civil Code, the rights of doctors, pharmacists, lawyers, engineers, experts, liquidators, brokers, professors and teachers expire after five years, provided that they are legally entitled to these rights as compensation for the work they have performed in their profession and the expenses they have incurred in line of said work.
- As per article 377 of the Civil Code, taxes and fees due to the state or any public legal entity shall expire after five years unless the law provides for a longer time limit. Moreover, the right to claim a refund of taxes and fees wrongfully paid shall lapse after five years from the date of payment.
- As per article 140 of the Civil Code, the right to contest the validity of a contract shall lapse if not invoked by the party to said contract within three years.
- As per article 172 of the Civil Code, claims for compensation arising from an unlawful act shall lapse after three years from the day on which the party suffering the damage became aware of the occurrence of said damage and the person responsible. This claim shall lapse, in any case, after fifteen years from the day on which the unlawful act occurred.

Law stated - 25 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

According to article 218 of Law No. 131 of 1948 (the Civil Code), the general rule is that the creditor may not seek performance of the obligation nor claim compensation from the court except after legally notifying the debtor to fulfil their obligation.

In the event that said rule is not respected, the court shall not accept the claim.

However, article 220 of the Civil Code provides exceptions to the aforementioned general rule:

- if the performance of the obligation becomes impossible or futile due to the debtor's actions;
- if the subject of the obligation is compensation for an unlawful act;
- if the subject of the obligation is the restitution of property that the debtor knows to have been stolen or that they acquired without right, and with knowledge of such defect in title; and
- if the debtor expressly states in writing their refusal to perform their obligation.

Moreover, the parties may agree in the contract that this notice shall be assumed in specific cases. In such case, the creditor shall not be obligated to notify the debtor before raising the claim as per article 219 of the Civil Code.

Law stated - 25 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

As per article 67 of Law No. 13 of 1968 (Civil Procedures Code), the claimant shall submit their statement of claim with the required supporting documents to the competent court, where it will be registered in the court's register.

The clerk shall register the case on the day of filing of the statement of claim in the court's register, after setting a date for the upcoming hearing for its consideration.

As per article 68 of the Civil Procedures Code, the court bailiff shall notify the defendant of the claim filed against them within 30 days from the date of receipt of the statement of claim unless a court hearing has been scheduled within the aforementioned period. Such notice shall include the full information of the claimant, the date of submission, the competent court, the facts of the case, the claims and the legal basis.

While submitting the claims to the competent court, the claimant shall be required to pay initial judicial fees, which shall be determined upon review of all submitted documents.

In practice, Egyptian courts are overloaded. However, the Ministry of Justice and court chiefs are improving the courts' capacity to handle their caseloads by incorporating new tribunals and specialised courts (eg, economic and labour courts).

Law stated - 25 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The claim starts with the notice of claim served to the defendant.

Thereafter, both the claimant and the defendant shall submit their claims, responses or counterclaims to the court. Once the court finds that the facts of the matter are clear, and the claimant and defendant do not request the submission of any further documents, the court shall render its judgment.

The timetable of a normal claim is six months; however, in the event that the court decided to refer the case to an expert, the case may take over one year.

Law stated - 25 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

As per Law No. 13 of 1968 (Civil Procedures Code), a party may challenge the court's jurisdiction by claiming the court's incompetence due to (1) the type of the dispute to be considered by the court, (2) the value of the dispute to be considered by the court and (3) local jurisdiction of the court.

Type of dispute

As per articles 42 and 43 of the Civil Procedures Code, district courts shall be competent to consider commercial and civil cases especially, inter alia:

- claims related to the use of water and the cleaning of canals, irrigation channels and drains;
- signature authenticity claims, regardless of their value; and
- claims for the division of a common property.

Further, according to article 47 of the Civil Procedures Code, the jurisdiction of preliminary courts extends to civil and commercial proceedings that do not fall under the jurisdiction of district courts.

As for Courts of Appeal, they have jurisdiction to adjudicate on appeal cases brought before them against judgments issued initially by preliminary courts.

Value of the dispute

In Application of Law No. 157 of 2024, as of October 2024, the following thresholds shall apply.

- As a general rule, district courts shall be competent with regard to disputes involving a total value of less than 200,000 pounds. District courts' judgments may not be appealed if the value of the claim was less than 30,000 pounds.
- However, disputes with a value exceeding 200,000 pounds shall fall under preliminary courts' jurisdiction. Preliminary courts' judgments may not be appealed if the value of the claim was less than 200,000 pounds.
- Accordingly, the Courts of Appeal shall only consider disputes with a minimum value of 200,000 pounds.
- Additionally, the Court of Cassation shall only consider disputes involving a minimum value of 500,000 pounds.

Local jurisdiction

As a general rule and in accordance with article 49 of the Civil Procedures Code, the competent court to consider a case shall be the court within whose jurisdiction the defendant's domicile is located.

However, exceptions to this rule may include, inter alia:

- if the defendant has no domicile in Egypt, the competent court shall be the court within whose jurisdiction their place of residence is located;
- if there are multiple defendants, jurisdiction shall be with the court within whose jurisdiction the domicile of one of them is located; and
- in the event of disputes regarding possession and property rights on buildings, the competent court shall be the court in whose jurisdiction the building is located.

As per articles 109 and 108 of the Civil Procedures Code, a plea of lack of jurisdiction may be raised at any stage of the proceedings. However, a plea of lack of local jurisdiction shall be presented to the court before making any request or defence on the case. In other words, the challenging party shall be required to make said request before the judge starts reviewing the merits of the case.

Otherwise, the parties' right to challenge the court's jurisdiction shall be waived. Further, the appellant's right to challenge the court's jurisdiction shall also be waived, if not included in the statement of appeal.

Law stated - 25 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

As a general rule and in accordance with the provisions of Law No. 13 of 1968 (Civil Procedures Code), parties shall not be entitled to control the procedures and the timetable. However, in practice, if both the claimant and the defendant agreed on a timetable (eg, to grant them time before the next hearing) or a specific procedure (eg, to delegate an expert) and requested it jointly from the court, the latter will most likely accept it, if the requested procedure or timetable is in accordance with the law.

Law stated - 25 May 2025

Evidence – documents**9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?**

The claimant shall be required to submit their claim with the original supporting documents in the attachment. If the claimant submitted copies of the supporting documents, the defendant may challenge the validity of the said documents and therefore the court may refuse to review them.

Article 20 of L. 25 of 1968 (Egyptian Evidence Law) explicitly states that a party – only in the following cases – may submit a request to the court to force the other party to provide any documents that may be in their possession: (1) if it is allowed by law to demand the other party to provide or deliver any productive document; (2) if the document is common between the parties (ie, the document is beneficial to both parties or proves their commitments or their mutual rights); or (3) if the other party based their claims on a document at any stage of the proceedings.

Law stated - 25 May 2025

Evidence – privilege**10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?**

As per article 66 of L. 25 of 1968 (Egyptian Evidence Law), any communication between any party and their attorney, even if in-house, shall be deemed as privileged. Moreover, lawyers are prohibited from testifying in court except if asked to testify by their clients.

Law stated - 25 May 2025

Evidence – pretrial**11 | Do parties exchange written evidence from witnesses and experts prior to trial?**

Egyptian law does not oblige the parties to exchange written evidence from witnesses and experts prior to trial.

Law stated - 25 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

If the court decides to hear witnesses on a specific matter of the claim, the court will render a preliminary judgment referring the case to investigation and will stipulate a date for the parties to bring their witnesses to prove the relevant matter.

However, in practice, it is uncommon for courts in Egypt to bring witnesses to give oral evidence.

If the court decides to refer the case to an expert, the court will render a preliminary judgment specifying the expert's speciality, the matter to be examined and the time for examining this matter. Once the examination is concluded, the expert will draft a report and submit it to the court, to which the parties are entitled to review and submit objections against the said report.

Law stated - 25 May 2025

Interim remedies

13 | What interim remedies are available?

There is no exhaustive list with regard to the available interim remedies under Egyptian law. However, interim remedies include, inter alia:

- interim freezing of the debtor's assets (eg, bank accounts), and any of the debtor's assets under a third party, is available; or
- cease and desist orders.

Law stated - 25 May 2025

Remedies

14 | What substantive remedies are available?

If claimed, an interest rate of four per cent in civil matters and five per cent in commercial matters might be included in the judgment. The interest rate, if pre-stated in the contract, may not exceed seven per cent, as per articles 226 and 227 of L.131 of 1948 (Egyptian Civil Code).

Law stated - 25 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

There are no specific rules governing the settlement process after the submission of a claim to the competent Egyptian court and filing of a case. As a general rule, the parties may, during the course of judicial proceedings, proceed with settling their dispute through out-of-court settlement.

However, the court must be notified of the settlement proceedings in order to assess the fees payable in respect of the case. On the other hand, the lawsuit may be suspended based on the agreement of the parties.

The court shall require approval of the parties' agreement for suspension. The claimant shall be deemed to have abandoned their claim in the event the case is not expedited after the suspension term has expired.

Law stated - 25 May 2025

Enforcement

- 16** | What means of enforcement are available?

The claimant executes the civil judgment through the court bailiff based on the writ of execution issued by the execution judge of the competent court.

The enforcement of the judgment pursuant to the writ of execution may be directed against movable (eg, bank accounts) or immovable assets based on the claim.

Law stated - 25 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings are held in public unless otherwise decided by the court. Only judgments, out of all the court documents, are available to the public. There are no specific circumstances determined by law to hold court hearings in private. However, in practice, the court may decide to hold hearings in private either because of the nature of the dispute or for personal matters affecting the parties, or to preserve public order.

There is no specific mechanism to preserve documents disclosed as part of the court process. However, the documents disclosed as part of the court process and as submitted

by the parties may be preserved by the court if the judgment is appealed or until the expiry of the appeal deadlines.

Law stated - 25 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

In accordance with articles 184 and 185 of L. 13 of 1968 (Civil Procedures Code), as a general rule, courts may order costs against the losing party. However, if the losing party did not dispute the claimed matters, courts may decide costs against the winning party.

Moreover, the losing party may be exempt from paying the costs in some cases including, -inter alia:

- rulings issued dismissing the lawsuit as is;
- rulings issued rejecting the lawsuit filed against a person without capacity; and
- rulings issued rejecting the lawsuit as it was filed in contradiction with the procedures prescribed by law.

Law stated - 25 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

As per article 82 of the Advocacy Law No. 17 of 1983, lawyers shall have the right to receive fees for their legal work and to recover the expenses incurred to carry out the work in which they are entrusted. In all cases, the fees payable by the client to the lawyer may not be determined solely on the basis of a share in kind of the disputed rights. Lawyers shall be entitled to receive their fees in accordance with the contract concluded between them and their client. The assessment of lawyers' fees shall include the importance of the case, the effort made by the lawyer and the result achieved.

With regard to funding of the proceedings using third-party funding, this is not regulated under Egyptian laws and regulations.

Law stated - 25 May 2025

Insurance

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20 | Is insurance available to cover all or part of a party's legal costs?

The insurance of a party's legal costs in civil proceedings is not regulated under Egyptian law.

Law stated - 25 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

As per article 3 of the Civil Procedures Code No. 13 of 1968 (Civil Procedures Code), any interested party may intervene in the case proceedings by either joining one of the litigants or requesting a judgment in their own favour by a request related to the case.

The intervention shall be by the usual procedures for filing the case before the day of the hearing or by a request submitted orally at the hearing in their presence and recorded in its minutes.

Law stated - 25 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The parties shall be entitled to appeal the following judgments: first instance judgments rendered by district courts with case value exceeding 30,000 pounds; otherwise, such judgment shall be deemed final.

First instance judgments rendered by preliminary courts with case value exceeding 200,000 pounds. Otherwise, such judgment shall be deemed final.

Judgments are issued in urgent matters by first instance courts, regardless of their type.

First instance judgments are deemed final due to violation of competency rules related to public order, invalidity of the judgment or the invalidity of the first instance proceedings.

Law stated - 25 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

As a general rule, judgments issued in a foreign country may have the order of enforcement in Egypt, with the same conditions prescribed under the law of the said country for the

enforcement of Egyptian judgments and orders there. The application for enforcement of a foreign judgment in Egypt shall be submitted to the court of first instance for the district in which enforcement is sought.

However, in practice, procedures for the enforcement of foreign judgments in Egypt may not be applicable.

Law stated - 25 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Egyptian law does not provide specific procedures to obtain oral or documentary evidence from other jurisdictions.

However, for the purpose of judicial cooperation between the Egyptian and foreign judicial authorities within money-laundering crimes, related predicate offences and terrorist financing offences, Egyptian courts may use information obtained through the said judicial cooperation.

Law stated - 25 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Egyptian Arbitration L. 27 of 1994 (Egyptian Arbitration Law) is based on the UNCITRAL Model Law. However, there are few discrepancies, mainly: in cases of nullity of the award as per article 58 of the Egyptian Arbitration Law, the Egyptian Arbitration Law includes an additional ground based on the non-application by the arbitral tribunal of the law chosen by the parties.

Egyptian Arbitration Law also states that, for the recognition or enforcement of the award, the latter should not contradict a prior court decision rendered by an Egyptian court on the merits of the dispute.

Law stated - 25 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Under articles 10, 11 and 12 of the Egyptian Arbitration L. 27 of 1994 (Egyptian Arbitration Law), the requirements for an enforceable arbitration agreement shall be as follows: (1) the

arbitration agreement shall be in the form of a written document or another written means of communication; (2) the scope of matters subject to arbitration shall be defined; (3) the parties to the arbitration agreement shall have legal capacity; and (4) the scope of matters subject to arbitration shall be reconcilable.

Law stated - 25 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In the event that Egyptian law is the applicable law in the dispute and the arbitration agreement is silent on the number of arbitrators to be appointed, article 15 of the Egyptian Arbitration Law states that three arbitrators shall be appointed. Each party shall appoint an arbitrator and the arbitrators of both parties shall agree on and appoint the third arbitrator.

The appointment of an arbitrator may not be challenged unless circumstances raise serious doubts to their impartiality or independence.

Neither party to the arbitration agreement may challenge the arbitrator whom they appointed except for a reason the party became aware of after the appointment of the arbitrator.

Law stated - 25 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Arbitrators are selected in accordance with the arbitration agreement. If not regulated under the arbitration agreement, they may be selected in accordance with the rules of Arbitration Law.

Law stated - 25 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitral procedure in the Egyptian Arbitration Law is generally similar to the UNCITRAL Arbitration Rules. Egyptian Arbitration Law will not meddle in the agreed upon terms unless it is a question of public order. Egyptian Arbitration Law has a few requirements that may help parties with multiple questions such as the language of the proceedings, submission

of memoranda, holding hearings, appointment of experts and the initiation of the arbitration proceedings.

Law stated - 25 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Under Egyptian Arbitration Law, the national courts shall be entitled to the following powers in support of the arbitral process:

- issue interim actions before or during the arbitration procedure if requested by any of the parties;
- appoint the sole arbitrator if the parties could not agree on one; or
- appoint the third arbitrator if the two appointed arbitrators could not agree on one;
- decide on the discharge of any arbitrator if requested by one of the parties for disqualification or non-performance of the entitled duties;
- decide on the extension of the duration of arbitration or the termination of the arbitration procedures if the arbitration did not end during the specified timeline; and
- decide on the nullity of the arbitral award.

Law stated - 25 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

The arbitral tribunal shall have the power to grant interim relief by virtue of a request submitted by one of the parties during the arbitration proceedings, if the nature of the dispute requires such relief.

However, the enforcement of the interim relief shall be made through the relevant Egyptian court.

Law stated - 25 May 2025

Award

32 | When and in what form must the award be delivered?

The arbitral award shall be delivered within the duration specified by the parties. If the parties do not specify a certain duration, the applicable duration shall be 12 months with

possibility of extending to 18 months by the arbitral tribunal. The award must be written and include, inter alia, the following: the names and addresses of the parties; the names, addresses, nationalities and title of arbitrators; a copy of the arbitration agreement (an explicit citation of the arbitration agreement would suffice); and a summary of the parties' claims, statements and relevant documents. The award must be signed by the arbitrators. If the minority refused to sign the award, the majority must include the reasons for the minority's refusal to sign.

Law stated - 25 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

The arbitral award may not be appealed before Egyptian courts. However, an action for the nullity of an arbitral award may be filed on one of the following grounds:

- if the arbitration clause is absent, void or voidable or exceeds the statute of limitations;
- if either party to the arbitration was unable to present its case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond its control, or failure to observe due process;
- if the tribunal did not apply the agreed applicable law to the dispute; the composition of the arbitral panel or the appointment of the arbitrators contradicts the applicable law or the parties' agreement;
- if the arbitral award included matters not falling within the scope of the arbitration clause; or
- if the award contradicts public order provisions in Egypt.

Law stated - 25 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Egypt is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the Convention); therefore, foreign arbitral awards issued in one of the signatory countries to the Convention shall be applicable in Egypt upon obtaining the writ of execution from the competent court. For the enforcement of the foreign and domestic arbitral awards, the claimant shall submit the following documents to the competent court requesting the writ of execution:

- the original award or a signed copy;
- copy of the arbitral agreement;
-

an Arabic translation of the award, authenticated by the competent authority, if the award was not issued in Arabic; and

- copy of the minutes proving the deposit of the award or a certified copy thereof to the clerk of the competent Egyptian court.

For the enforcement of foreign awards, the claimant must also submit evidence that no action was filed to nullify the award in the country where the award was decided.

Law stated - 25 May 2025

Costs

35 | Can a successful party recover its costs?

The arbitration tribunal shall be entitled to recover the costs of the arbitration proceedings, if requested by the successful party.

Law stated - 25 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

As a general rule, arbitration is commonly used in commercial agreements between parties. However, mediation shall not be deemed as a popular ADR process used in Egypt.

Law stated - 25 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

With regard to economic disputes, a specialised authority at the economic courts responsible for preparing the case and the satisfaction of all required documents shall be entitled to conduct several undisclosed hearings with the parties in an attempt to settle the dispute amicably and agree on a mediation procedure before commencement of litigation procedures.

With regard to labour disputes, the employer and employee shall be entitled to request a committee at the labour office to settle the dispute amicably prior to the recourse to litigation proceedings.

Law stated - 25 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

Law stated - 25 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In the past year, no key cases or decisions were issued with regard to dispute resolution in civil proceedings under Egyptian law.

However, Law No. 157 of 2024 has regulated the value of disputes clarifying the minimum and maximum value for each courts' jurisdiction.

Additionally, Law No. 1 of 2024 stated new amendments to the Penal Procedural Law, regulating the appeal requirements of criminal judgments in Courts of Appeal, before recourse to appeal in Courts of Cassation.

Last, the new Labour Law No. 14 of 2025 has established a new and specialised labour court system that shall apply as of 1 October 2025.

Law stated - 25 May 2025



SOLIMAN, HASHISH & PARTNERS
LAW FIRM

Frederic Soliman
Aleyeldine Fahmy

f.soliman@shandpartners.com
a.fahmy@shandpartners.com

Soliman, Hashish & Partners

[Read more from this firm on Lexology](#)

Germany

Nikita Gorjaev, Klaus Oblin

OBLIN Attorneys at Law

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ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

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UPDATE AND TRENDS

Recent developments and future reforms

LITIGATION

Court system

1 | What is the structure of the civil court system?

The ordinary courts administer civil litigation proceedings in Germany. All ordinary courts are at the state level. One exception from this general rule is the Federal Court of Justice as a supreme court (BGH). The Courts Constitution Act (GVG) regulates work of ordinary courts. The organisational structure does not vary widely from state to state: there are the local courts, the regional courts, and the higher regional courts. However, in Bavaria, there is also the Bavarian Highest Regional Court, which was re-established in 2018 after being dissolved in 2006. In civil matters, the re-established Bavarian Highest Regional Court has jurisdiction to decide on appeals on points of law and leap-frog appeals and cases that, in other states, would fall under the jurisdiction of the higher regional courts.

Currently, in Germany there are:

- more than 600 local courts that have jurisdiction over small claims with amounts less or equal to €5,000. According to section 23 of the GVG, local courts have jurisdiction over civil claims arising out of tenancy of residential property or concerning the existence of such a tenancy, disputes concerning wildlife damage, and claims arising out of a contract for a life annuity, life endowment or for vacation of premises that is connected with the transfer of possession of a piece of land. Proceedings in the local courts are conducted by a sole judge;
- 116 regional courts (after the separation of the Berlin Regional Court into two independent courts in 2024) that have jurisdiction over all civil disputes that are not assigned to the local courts. For instance, if the amount of dispute exceeds €5,000. Furthermore, the regional courts have exclusive jurisdiction, irrespective of the value of the matter over: claims brought against the fiscal authorities based on civil service law; claims brought against judges and civil servants for overstepping their official powers; claims based on false, misleading or omitted public capital market information; disputes concerning a customer's order rights; and claims deriving from the Corporate Stabilisation and Restructuring Act. The regional courts also have appellate jurisdiction over decisions of local courts. If procedural law does not provide for a decision to be made by a judge sitting alone, the civil divisions of the regional courts are composed of three members, including the presiding judge;
- 24 higher regional courts that have jurisdiction over disputes arising out of arbitration proceedings (section 1062 of the Code of Civil Procedure (ZPO)) and disputes related to capital markets law. The higher regional courts also have jurisdiction in civil matters for hearing and ruling on appeal against decisions of the local courts in the matters decided by the family courts and appeal against decisions of the regional courts.
- the Federal Court of Justice with a seat in Karlsruhe. In civil law matters, the Federal Court of Justice has jurisdiction for hearing and ruling on the legal remedies of appeal on points of law only, immediate appeal on law only in lieu of an appeal on fact and law, complaint on points of law only and immediate complaint on points of

law only in lieu of a complaint . The panels of the Federal Court of Justice shall give decisions sitting with five members, including the presiding judge.

Furthermore, specific civil divisions are established in the higher regional courts, focusing on different subject matters such as banking and financial transactions, insurance policy relationships, insolvency, media, and building and engineering contracts. In the Federal Court of Justice, civil cases are also allocated between panels according to fields of law such as corporate law, insurance contract law, real property law, the law of torts, product liability, medical liability, construction and architectural law, the law on the sale of goods, landlord and tenancy law insolvency law, patent law, etc.

In 2024, the German parliament approved the Act to Strengthen Germany as a place of jurisdiction, which will come into force on 1 April 2025. The new law permits the German federal states to establish specialised courts for commercial matters in the form of commercial courts and commercial chambers within the higher regional courts. The parties to the dispute can agree to resolve the matter under the jurisdiction of such commercial court if the amount of civil dispute is at least €500,000. One of the main features of such courts and chambers is that proceedings should be in English.

Several international commercial chambers were already established in Germany at the level of the regional courts:

- the Chamber for International Commercial Disputes of the Regional Court of Frankfurt;
- the Chamber for International Commercial Disputes of the Regional Court of Hamburg;
- the Stuttgart Commercial Court (Division of the Regional Court of Stuttgart); and
- the Mannheim Commercial Court (Division of the Regional Court of Mannheim).

Law stated - 23 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In accordance with German Judiciary ActDRiG, qualification to hold judicial office is acquired by anyone who concludes their legal studies at a university by taking the first state examination and completes a subsequent period of preparatory training; the first state examination comprises a university examination covering areas of specialisation and a state examination covering compulsory subjects.

The judge control course of civil proceedings. For instance:

- pursuant to section 136 of the ZPO, the judge shall open the hearings and shall direct their course. The judge shall grant the right to speak and may deny leave to speak to persons who are not complying with his or her orders;
- according to section 286 of the ZPO, the court should decide, at its discretion and conviction, and taking account of the entire content of the hearings and the results

obtained by evidence being taken, whether an allegation as to fact is true or false. The judgment sets out the reasons informing the conviction of the judges;

- pursuant to section 278a of the ZPO, the court may suggest that the parties pursue mediation or other alternative conflict resolution procedures; and
- according to book 2 title 7 of the ZPO, the court may examine witnesses.

The German civil litigation proceedings do not presume the existence of juries.

Law stated - 23 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The application of the statute of limitations in German law is a matter of substantive law. In accordance with the general rule expressed in section 195 of the German Civil Code (BGB), the standard limitation period is three years.

However, claims to the transfer of ownership of land and the creation, transfer or cancellation of a right to a plot of land or to a change of the subject matter of such a right and entitlements to consideration are statute-barred after 10 years.

Additionally, several types of claims have a 30-year limitation period. These include damage claims based on intentional injury to life, claims that have been finally and bindingly established, claims under enforceable settlements or enforceable documents, claims that have become enforceable upon being recognised in insolvency proceedings, etc.

The limitation period might be suspended if negotiations between the debtor and the creditor are in progress regarding the claim or the circumstances giving rise to the claim until one party refuses to continue the talks. The claim is statute-barred at the earliest three months after the end of the suspension. The limitation period might be suspended due to legal proceedings mentioned in section 204 of the BGB. The parties can agree to extend the limitation period, but the extension cannot exceed 30 years.

Law stated - 23 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

German law does not require pretrial disclosure of information or evidence. Nevertheless, the parties can agree on pre-litigation steps before initiating proceedings, such as mediation or conciliation, and implement it in the contract as a multi-tiered dispute resolution clause. Generally, the claimant should contact the respondent before bringing a claim; otherwise, according to section 93 of the ZPO, if the respondent has not given cause for commencement of the proceedings, the claimant shall bear the costs of the proceedings if the respondent immediately acknowledges the claim.

Law stated - 23 May 2025

Starting proceedings

- 5** | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Legal proceedings are initiated by submitting a statement of claim to the court. The statement of claim must include the designation of the parties and the court, exact information on the subject matter, the grounds for filing the claim, and a precisely specified petition. Additionally, the statement of claim should provide information about prior attempts made at alternative dispute resolution proceedings (if any), and it shall also state whether any reasons exist preventing such proceedings from being pursued. It shall state whether any reasons would prevent the matter from being ruled on by a judge sitting alone. From 1 January 2022, lawyers and public authorities are obligated to file submissions exclusively as electronic documents unless this is not possible for technical reasons, in accordance with section 130d of the ZPO.

Concurrently, with filing a statement of claim, the claimant must to pay the court fee in accordance with provisions of the German Court Fees Act.

As for the service of documents within the European Union, Regulation (EU) 2020/1784 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters will apply. For service of documents with parties from non-EU countries, the provisions of the Hague Civil Procedure Convention of 1 March 1954, the Hague Service Convention of 15 November 1965, or one of the bilateral treaties that Germany has ratified may be applied.

Law stated - 23 May 2025

Timetable

- 6** | What is the typical procedure and timetable for a civil claim?

There is no unified timeline for civil proceedings under the ZPO. The length of each case depends on the pending issue, complexity and amount of the dispute. Nevertheless, the court should resolve the dispute swiftly and without unnecessary delays.

Some provisions of the ZPO include an obligatory timetable:

- Pursuant to section 274 (3) of the ZPO, the period of at least two weeks must lapse from the time at which the statement of claim is served and the date of the hearing (time for entering an appearance). If the documents should be served abroad, the presiding judge determines the time for entering an appearance in arranging the hearing date.
-

According to section 277 (3) of the ZPO, the period for submitting a written statement of defence shall be at least two weeks. The court has discretion to extend limits.

- Pursuant to section 315 (2) of the ZPO, a ruling pronounced at the hearing at which the court proceedings are declared terminated shall be forwarded as a completely worded document to the court registry prior to the expiry of three weeks, calculated from the date on which the ruling was pronounced.

Generally, the judge opens oral hearings with a summary of the parties' submissions, discussing the potential of amicable dispute resolution with the parties. If an amicable settlement is fruitless, the judge will conduct the court hearing mainly focusing on key matters of the case. The judge will render the judgment if there is no need to explore new evidence and issues. The judgment shall be pronounced at the hearing at which the court proceedings are declared terminated or at a hearing to be arranged immediately. The judgment might be pronounced later than three weeks after the last hearing only for grave cause due to the scope or the complexity of the dispute.

The average length of civil proceedings in the regional courts as a first instance is approximately 13 months. In comparison, the average duration of civil proceedings in regional courts as a second instance is approximately 22 months, and in higher regional courts as a second instance, it is up to 27 months.

Law stated - 23 May 2025

Challenging the court's jurisdiction

- 7** | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The party presuming that the court lacks jurisdiction to hear the dispute should raise an objection as rapidly as possible regarding the court's lack of jurisdiction before making submissions on the merits of the dispute. Alternatively, if the party does not raise such an objection, the competence of a court would be presumed by the fact that the respondent makes an appearance in an oral argument on the merits of the case and fails to object to the court's lack of jurisdiction in accordance with section 39 of the ZPO.

Furthermore, if the court finds that another court is competent to preside over the dispute, the court before which the action was initially brought would declare, upon corresponding application being made by the claimant, that it is not competent and would refer the legal dispute to the competent court.

Historically, it is rather impossible to obtain anti-suit injunction in Germany. Nevertheless, several years ago, the so-called anti-anti-suit injunction was confirmed by the Higher Regional Court of Munich (OLG München) in the decision of 12 December 2019 No. 6 U 5042/19 to block any action of a party from chasing an anti-suit injunction in another jurisdiction.

Law stated - 23 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Under German law, the parties do not have the discretion to control and set procedural rules and a timetable in civil proceedings. However, the parties may ask to extend deadlines for submitting documents and postpone hearings if necessary. Generally, the court will grant such an extension or postponement, but rarely, not more than once.

Law stated - 23 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

According to the general rule, each party has to bring evidence to support its position regarding the dispute. However, the court may direct one of the parties or a third party to produce records or documents, as well as any other material, that is in its possession and to which one of the parties has made reference. The court may set a deadline in this regard and may direct that the documents or records will remain with the court registry for a certain period determined by the court under section 142 of the ZPO. In the same vein, the court may direct the parties to the dispute to produce the files in their possession to the extent they consist of documents concerning the hearing on the matter and the decision by the court in accordance with section 143 of the ZPO.

Law stated - 23 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

As there is no obligation to produce documents, the privilege of documents does not exist as a concept in German law. However, according to section 383 (1) of the ZPO, lawyers who act as counsel might refuse to give evidence as a witness regarding confidential information of their clients. Such testimonial privilege also applies to in-house lawyers in civil proceedings. Foreign lawyers admitted to the German Bar are recognised for privilege issues.

Law stated - 23 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

No.

Law stated - 23 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence shall be taken before the court hearing the case. As a general rule, the court sets a period by court order under which parties should present evidence. When the deadline has expired without success, the evidence may be used only if the court decides, at its discretion, that using such evidence will not delay the proceedings. There are several ways to provide evidence: by expert, by records and documents, by examination of a party, by witness and by visual inspection.

To accept evidence court generally will assess certain issues in this regard:

- facts that are common knowledge need not be substantiated by evidence;
- relevance of the evidence for the particular dispute;
- facts that can be proved by evidence is disputed between parties; and
- necessity of evidence is argued with sufficient certainty (German courts tend to prohibit 'fishing expeditions').

Commonly, witnesses should be examined orally. Evidence by hearing witnesses shall be offered by naming the witnesses and designating the facts regarding which the witnesses are examined. The judge holds the examination of witnesses. The rules for the evidence provided by witnesses shall apply mutatis mutandis to the evidence provided by experts. The court hearing the case shall select the experts involved and determine their number. It may limit itself to appointing a single expert. It may appoint other experts to replace the first expert. In most cases, the expert will prepare a written report, and the court shall set a period for the expert within which he or she renders his or her signed report. The expert shall be remunerated in accordance with the Judicial Remuneration and Compensation Act.

Law stated - 23 May 2025

Interim remedies

13 | What interim remedies are available?

Two main options for interim remedies are available under the provisions of the ZPO: claim to seizure and preliminary injunction.

Seizure

Seizure is a remedy to secure compulsory enforcement against movable or immovable property for a monetary claim or a claim that may evolve into a monetary claim. Seizure is an available remedy wherever there is a legitimate concern that, without a writ of pre-judgment seizure, the enforcement of the judgment would be frustrated or be significantly more difficult. The decision regarding the seizure request shall be delivered as a final judgment if the matter is dealt with in an oral hearing, and in all other cases by a court order. The respondent can file an objection against the court order directing the seizure. In its objection, the party filing must demonstrate the grounds that prove that the seizure should be set aside. The court will schedule a hearing for oral argument ex officio. Lodging an objection will not suspend the enforcement of the seizure.

Preliminary injunctions

Meanwhile, preliminary injunctions regarding the subject matter of the litigation are an available remedy given the concern that changing the status quo might frustrate the realisation of the right enjoyed by a party or make its realisation significantly more difficult. The injunction may consist of a temporary deprivation of property (sequestration) and also in the opponent being required to take action or being prohibited from taking it, in particular by prohibiting him from the sale, encumbrance or pledge of a plot of real estate, of a registered ship or of a ship under construction. The court shall determine at its sole discretion which orders are required to achieve the purpose intended.

Moreover, within EU member states, parties can use the European Account Preservation Order as an interim remedy to freeze funds in a debtor's bank account in another EU member state in accordance with Regulation (EU) 655/2014 of 15 May 2014.

Law stated - 23 May 2025

Remedies

14 | What substantive remedies are available?

The following types of substantive remedies are available under German law:

- claim for specific performance of obligation;
- claim for damages;
- claim for unjust enrichment;
- vindication claim; and
- withdrawal of contract, etc.

German law does not recognise the concept of punitive damages.

Law stated - 23 May 2025

Settlement

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15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

As a starting point, pursuant to section 278 of the ZPO, in all circumstances of the proceedings, the court should act to conclude an amicable resolution of the legal dispute between parties. For these purposes, the hearing shall be preceded by a conciliation hearing unless efforts to come to an agreement before an alternative dispute-resolution entity have already been made, or unless the conciliation hearing obviously does not hold out any prospects of success. In the conciliation hearing, the court should discuss with the parties the circumstances and facts as well as the status of the dispute thus far, assessing all circumstances without any restrictions and asking questions wherever required.

The parties may also settle the matter before the court by submitting a written suggestion. The court shall establish a corresponding order that the settlement has been reached.

Furthermore, the court may suggest that the parties pursue mediation or other alternative dispute resolution procedures. If the parties decided to pursue mediation or other alternative dispute resolution procedures, the court shall order the stay of the proceedings.

Law stated - 23 May 2025

Enforcement

16 | What means of enforcement are available?

There are different requirements for enforcement of judgment under the ZPO. First, compulsory enforcement may be pursued based on the judgments that have become final and binding, or that have been declared provisionally enforceable. Enforcement of the monetary judgment requires obtaining a certificate of the enforceability in accordance with section 724 of the ZPO.

The court-appointed enforcement officer (bailiff) shall ensure the prompt, full and cost-efficient recovery of monetary claims. Additionally, declaratory judgments cannot be enforced under the ZPO.

If the creditor wants to enforce a debt involving movable assets, a bailiff can seize and sell the debtor's movable assets and transfer money to the creditor. Meanwhile, enforcement against immovable property (eg, real estate) is implemented by entering a debt-securing mortgage for the claim, by enforced auction and by the receivership. The first step would be applying to the Land Registry office where the debtor's property is located to force a security mortgage registered in the creditor's name in the Land Register. The creditor can invoke a forced sale scenario after a forced security mortgage is listed in the Land Register. Moreover, when enforcement action does not lead to any result, the creditor can initiate insolvency proceedings against the debtor.

Typically, enforcement proceedings in Germany are conducted promptly and costs for the enforcement are not expensive.

Law stated - 23 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings in Germany are open to the public. According to section 169 of the Courts Constitution Act, hearings before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio and television or radio recordings intended for public presentation or publication of their content shall be inadmissible. Audio transmissions to a workspace for persons reporting for the press, radio, television, or other media may be authorised by the court. Audio transmissions may be prohibited to protect the legitimate interests of the parties or third parties or to ensure the proper course of proceedings.

Nevertheless, proceedings, discussions and hearings on family and non-contentious matters shall not be made public. The court may admit the public but not against the will of a participant.

Additionally, according to section 19 of the Act on the Protection of Trade Secrets, court may limit access, in whole or in part, to a certain number of reliable persons, to safeguard trade secrets to documents submitted or presented by the parties or third parties that may contain trade secrets, or to the hearing at which trade secrets could be disclosed, and to the recording or minutes of the hearing.

Law stated - 23 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

There are two types of costs in German civil litigation proceedings: court fees and lawyers' fees. Court fees are regulated by provisions of the German Court Costs Act, while lawyers' fees are regulated by provisions of the Lawyers' Remuneration Act (RVG).

German law adopts the 'cost follows the event' doctrine, which means that the losing party must pay the costs of the proceedings. In cases where each party has prevailed for a part of its claim, the costs will be shared proportionately. The court may impose the entire costs of the proceedings on one of the parties if the amount the other party claimed was relatively small or has resulted in only slightly higher costs. Furthermore, the costs of an unsuccessful appeal shall be paid by the party that has lodged the appeal.

As a general rule, claimants from EU member states or EEA states should not provide security for the costs of the proceedings. Unless multilateral or bilateral international treaties provide otherwise, the court will grant security orders for costs in cases where the claimant resides outside EU member states or EEA countries. The court shall assess the amount of the security upon its sole discretion. In this context, the costs that will accrue to the respondent if it brings countercharges shall not be considered. Finally, the court should

determine a period within which security must be provided. The court could withdraw the action if the security is not provided by the deadline.

For instance, in Decision X ZR 54/19 of 1 March 2021, the BGH has expressed position that British claimants should also provide security of costs in German proceedings under section 110 of the ZPO in post-Brexit disputes.

Law stated - 23 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency fees are generally prohibited in Germany. Nevertheless, in 2006, the German Federal Constitutional Court stated that such prohibition of contingency fees is incompatible with the freedom of profession and, consequently, unconstitutional. As a reaction to this ruling, section 49 (2) of the German Lawyers Act (BRAO) was amended and declared that agreements based on which remuneration or its amount is made dependent on the outcome of the case or the lawyer's success, or based on which a lawyer is paid part of the amount recovered (contingency fee) are not permissible unless otherwise provided under the RVG.

In turn, according to section 4a of the Lawyers' Remuneration Act, quota litis (an agreement when one party who has a claim challenging to recover agrees with another party to give a part of the amount to obtain his services to recover the rest) may be agreed only if it relates to a maximum monetary claim of €2,000, a collection service is provided out of court or the client, upon reasonable consideration, would be deterred from taking legal proceedings in a particular case without the agreement of quota litis.

Furthermore, in August 2021, the so-called German Legal Tech Act (the Act to Promote Consumer-Oriented Offers in the Legal Services Market) passed the Bundestag (German federal parliament) and came into force on 1 October 2021. The German Legal Tech Act mainly focuses on the regulation of the services offered by legal tech companies that specialise in the mass enforcement of individual claims in the consumer market. The regulation mentioned above also explicitly states that debt collection providers can cooperate with litigation financiers, and the existence of several reporting obligations in the context of participation in litigation funding does not create a conflict of interest and does not prohibit such legal services.

In accordance with section 49b (3) of the BRAO, the payment or acceptance of a part of the fees or other benefits in return for the referral of cases, regardless of whether this occurs in a relationship with a lawyer or a third party of whatever kind, is not permissible. Where several lawyers are working on a case, they may work on the case jointly and divide the fees up amongst themselves in appropriate proportion to the services they each provided and the responsibility and the liability they each held.

Law stated - 23 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Legal costs insurance is regulated by the Insurance Contract Act 2008 (VVG). According to section 125 of the VVG, in the case of legal expenses insurance, the insurer shall be liable to the extent necessary to look after the policyholder's legal interests or the insured person as per the agreement. Practically, after-the-event insurance is available in Germany but is primarily used for consumer disputes and has not yet gained widespread adoption in complex commercial litigation.

Law stated - 23 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Collective class actions have a complicated history in German law. Generally, class actions have not been one of the central issues of German procedural law. However, in 2018, as a reaction to the 'Volkswagen diesel scandal' and following diesel-related class actions, a model declaratory action was implemented into the ZPO to obtain declaratory relief by means of representative actions.

The following step in the evolution of collective class actions in Germany was the implementation of EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (the Representative Actions Directive) via the adoption of the Consumer Rights Enforcement Act (VDuG), which came into force on 13 October 2023.

According to the provisions of the VDuG, qualified entities may seek injunctions or redress against a respondent who violates consumer rights on behalf of a group of consumers. The VDuG applies to all spheres of German civil law except labour law disputes. Nevertheless, its provisions are mainly focused on protecting consumers and small and medium-sized enterprises. According to the VDuG, at least 50 consumers must be concerned in order to file a collective redress. The higher regional court in the district where the respondent company is located has exclusive jurisdiction for actions under the VDuG.

Furthermore, in a series of landmark decisions (the BGH judgment of 27 November 2019 VIII ZR 285/18 in the *LexFox* case and the BGH judgment of 13 July 2021 II ZR 84/20, *AirDeal* case) the BGH has expressed the standpoint that the so-called assignment model (a model that bundles the claims of several parties into one claim by assigning them to a legal services provider) is permitted under German law.

Law stated - 23 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Appeals are an available remedy against the final judgments delivered by the court of first instance. An appeal shall be admissible only if the value of the subject matter is greater than €600 or if the court of first instance has granted leave to appeal in its ruling.

An appeal may only be based on a violation of the law (the law is violated where a legal norm has not been applied or has not been applied properly), or on the facts and circumstances that should have been used as a basis pursuant to section 529 of the ZPO justifying a different decision. The time limit for filing an appeal is one month. This statutory period begins when the fully worded ruling is rendered.

The second appeal on points of law to the BGH is possible against the final judgments delivered by the appellate instance on fact and law. Such an appeal on the points of law could be filed by a party only if the court of appeal has admitted it in the judgment. Moreover, an appeal on points of law should be accepted if the legal matter is of fundamental significance, or the further development of the law or the interests in ensuring uniform adjudication requires a decision to be handed down by the court hearing the appeal on points of law.

Law stated - 23 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Generally, foreign judgments from EU member states courts will be recognised under Brussels Regulation (EU) No. 1215/2012 of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Court judgments from Norway, Iceland, Switzerland and Denmark will be recognised under the Lugano Convention 2007.

In cases where the EU Brussels Regulation, Lugano Convention 2007 or other multilateral or bilateral treaties do not apply, the procedure or recognition of foreign judgments is regulated by section 328 of the ZPO. For instance, German courts will refuse recognition if:

- the courts of the state to which the foreign court belongs do not have jurisdiction according to German law;
- the respondent, who has not entered an appearance in the proceedings and who takes recourse to this fact, has not duly been served the document by which the proceedings were initiated, or not in such time to allow him to defend himself;
- the judgment is incompatible with a judgment delivered in Germany, with an earlier judgment handed down abroad that is recognised, or if the proceedings on which such judgment is based are incompatible with proceedings that have become pending earlier in Germany;
-

the recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law and, in particular, if the recognition is not compatible with fundamental rights; and

- reciprocity has not been granted.

The enforcement procedure of foreign judgments in cases where the EU Brussels Regulation, Lugano Convention 2007 or other multilateral or bilateral treaties do not apply regulated by sections 722 and 723 of the ZPO. As a general rule, to be enforced in Germany, the foreign judgment should have become final and binding under the law of the country of origin.

Law stated - 23 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In the European Union, the procedure for obtaining oral or documentary evidence from other jurisdictions is regulated by the Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

In this regard, the regulation applies to both oral and documentary evidence and stipulates that judicial assistance requests may be communicated directly between the courts. Bilateral treaties may apply for judicial assistance requests outside the European Union.

Law stated - 23 May 2025

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

Sections 1025 to 1066 of the Code of Civil Procedure (ZPO), which constitute German arbitration law, are mainly identical to the text of UNCITRAL Model Law on International Commercial Arbitration (1985). However, these sections contain subtle distinctions from Model law:

- pursuant to section 1031 (2) of the ZPO, a form of arbitration agreement is considered to have been complied with also if the arbitration agreement is contained in a document transmitted by one party to the other party, and if, in the event of an opposition having been raised late, the content of that document is regarded, in keeping with common usage, to constitute the substance of an agreement;
-

according to section 1032 (2) of the ZPO, until the arbitral tribunal has been formed, a request may be filed with the court to have it determine the admissibility or inadmissibility of arbitral proceedings;

- according to section 1035 (3) of the ZPO, the German courts can provide assistance concerning the appointment of arbitrators as long as the place of arbitration has not yet been determined if the respondent or claimant has their seat or place of abode in Germany; and
- pursuant to section 1057 of the ZPO, unless otherwise agreed by the parties, the arbitral tribunal should decide, in its arbitral award, on the share of the costs of the arbitral proceedings that each of the parties bear.

Law stated - 23 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The requirements to form of arbitration agreement expressed in section 1031 of the ZPO:

- the arbitration agreement must be set out either in a document signed by the parties, or in letters, telefax copies, telegrams or other forms of communication exchanged between them that ensure documentary proof of the agreement (section 1031 (1) of the ZPO);
- the form of arbitration agreement is compiled also if the arbitration agreement is contained in a document transmitted by one party to the other party, or by a third party to both parties, and if, in the event of an opposition having been raised late, the content of that document is regarded, in keeping with common usage, to constitute the substance of an agreement (section 1031 (2) of the ZPO);
- reference to a document containing an arbitration clause, this constitutes an arbitration agreement, provided that the reference is such as to make said clause a part of the contract (section 1031 (3) of the ZPO);
- arbitration agreements with consumers must form part of a record personally signed by the parties. The written form required may be replaced by the electronic form. The record or electronic document may not contain agreements other than those relating to the arbitral proceedings (section 1031 (5) of the ZPO); and
- any failure to comply with formal requirements is remedied by a plea being made on the merits of the matter in the arbitral proceedings (section 1031 (6) of the ZPO).

Generally, following the doctrine of separability, the termination of the main contract does not entail the termination of the arbitration agreement in Germany. An arbitration agreement may be terminated by the decision of the parties and, therefore, becomes no longer enforceable. Pursuant to section 1040 (1) of the ZPO, the arbitral tribunal may rule on its own jurisdiction and in this context on the existence or the validity of the arbitration agreement. For that purpose, an arbitration clause should be treated as an agreement independent of the other terms of the contract.

Law stated - 23 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Book 10 of the ZPO does not specify any special requirements for arbitrators, such as nationality, religion, gender or education. In accordance with article 9.2 of the German Arbitration Institute (DIS) Arbitration Rules, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

The default procedure for appointment of arbitrators is reflected in section 1035(3) of the ZPO. In the case of absence of agreement made by the parties regarding the appointment of arbitrators, the court will appoint a sole arbitrator upon request by one party if the parties are unable to come to an arrangement regarding the appointment of the arbitrator. In arbitral proceedings with three arbitrators, each party appoints one arbitrator; the two arbitrators thus appointed will appoint the third arbitrator, who will act as presiding arbitrator. If a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court will appoint the third arbitrator upon request of a party.

This approach is followed by the DIS Arbitration Rules. According to article 11 of the DIS Arbitration Rules, if the parties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS shall select and appoint the sole arbitrator pursuant to article 13.2. Furthermore, pursuant to article 12 of the DIS Arbitration Rules, if the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee.

The procedure of challenge of arbitrators described in section 1037 of the ZPO. Firstly, the parties are free to agree on a procedure for challenging an arbitrator. Second, absent of such agreement, the party intending to challenge an arbitrator should submit to the arbitral tribunal, within two weeks of having become aware of the composition of the arbitral tribunal a written statement of the reasons for challenging the arbitrator. If the challenged arbitrator does not withdraw from office or if the other party does not agree to the challenge, then the arbitral tribunal decides on the challenge. Third, if the challenge is not successful, then the challenging party may request, within one month of having become aware of the decision rejecting the challenge, that the court decides on the challenge; the parties may agree on a different time limit. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and may make an award.

The grounds for the challenge of an arbitrator are contained in section 1036 of the ZPO. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts about their impartiality or independence, or if they do not meet the prerequisites agreed to by the parties. A party may challenge an arbitrator whom they have themselves appointed,

or in the appointment of whom the party has participated, solely for reasons of which the party became aware only after the appointment was made.

The grounds for removal of an arbitrator are contained in section 1038 of the ZPO. Where an arbitrator is unable, whether de jure or de facto, to perform their functions or fails to perform their functions within a reasonable time for other reasons, their mandate will end upon their withdrawal from office or upon the parties agreeing to terminate the mandate. Where the arbitrator does not withdraw from office, or where the parties are unable to agree on the termination of the mandate, each of the parties may request that the court decide on the termination of the arbitrator's mandate.

Meanwhile, in accordance with article 16.2 of the DIS Arbitration Rules, the Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future.

Finally, the International Bar Association Guidelines on Conflicts of Interest may be used in Germany in the context of disclosure of potential conflicts of interest.

Law stated - 23 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Generally, arbitrators appointed in arbitration proceedings with the seat in Germany are lawyers. Retired judges or professors are also appointed as arbitrators. Reference should also be made to the DIS endeavour for gender equality in the context of the appointment of arbitrators. According to the DIS, Gender Statistics on the appointment of arbitrators in DIS-administered arbitrations for 2023 show a record high for the appointment of female arbitrators in DIS arbitrations. For instance, 53.85 per cent of the DIS-nominated arbitrators appointed in 2023 were women (up from 44.4 per cent in 2022).

Law stated - 23 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Book 10 of the ZPO contains in certain sections mandatory provisions that the parties of the arbitration proceedings must comply with:

- the requirements of arbitrability (section 1030 of the ZPO);
- the requirements of form of the arbitration agreement (section 1031 of the ZPO);
- equal parties' rights concerning composition of the arbitral tribunal (section 1034 (2) of the ZPO);

- equal parties' rights concerning an effective and fair legal hearing (section 1042 (1) of the ZPO);
- the court's final decision on the challenge of an arbitrator (section 1037 (3) of the ZPO);
- the court's final decision on the on the jurisdiction of the arbitral tribunal (section 1040 (3) of the ZPO); and
- the right to set aside an award before state courts (section 1059 of the ZPO).

Law stated - 23 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

German state courts can assist arbitral tribunals on the following issues:

- determine the admissibility or inadmissibility of arbitral proceedings under request of a party in accordance with section 1032 (2) of the ZPO;
- grant an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration, before or after arbitral proceedings have commenced and upon request by a party in accordance with section 1033 of the ZPO;
- appoint arbitrators if a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court will appoint the third arbitrator upon request of a party in accordance with section 1035 of the ZPO;
- decide on the challenge of an arbitrator under request of a party in accordance with section 1037 (3) of the ZPO;
- decide on the tribunal's decision on its jurisdiction under the request of a party in accordance with section 1040 (3) of the ZPO;
- grant an enforcement of interim measure in accordance with section 1041(2) of the ZPO; and
- provide assistance on taking evidence or by performing any other judicial acts for which the arbitral tribunal is not authorised in accordance with section 1050 of the ZPO.

Law stated - 23 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

According to section 1033 of the ZPO, it is possible for a court to order, before or after arbitral proceedings have commenced and upon request by a party, an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration.

Moreover, under article 25.1 of the DIS Arbitration Rules, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

The interim relief could also be granted by emergency arbitrator under provisions of renovated DIS Sport Arbitration Rules (DIS-SportSchO), which came into force on 1 January 2025. According to article 25.3 of DIS-SportSchO, the Emergency arbitrator can decide on the application of a party seeking interim relief if the arbitral tribunal has not yet been constituted. Meanwhile, Book 10 of the ZPO and the DIS Arbitration Rules does not mention an emergency arbitrator.

Law stated - 23 May 2025

Award

32 | When and in what form must the award be delivered?

Book 10 of the ZPO does not specify any time limit for rendering the award. Meanwhile, pursuant to article 37 of the DIS Arbitration Rules, the arbitral tribunal shall send the final award to the DIS for review, in principle within three months of the last hearing or the last authorised submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the arbitral tribunal and take into consideration the circumstances of the case.

According to section 1054 of the ZPO, the arbitral award must be made in writing and signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal will suffice, provided that the reason for any missing signature is stated.

Moreover, the arbitral award should contain the reasons upon which it is based unless the parties have agreed that no reasons need be provided. For the DIS administered arbitral proceedings requirements for an award expressed in article 39 of the DIS Arbitration Rules:

- award shall be made in writing;
- award shall state the names and addresses of the parties, of any designated counsel representing a party in the arbitration, and of the arbitrators;
- award shall contain the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent;
- award shall contain information about the seat of the arbitration; and
- award shall contain information about the date of the award.

Furthermore, in the final award, the arbitral tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties.

Law stated - 23 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An exclusive list of grounds for setting aside an arbitral award is contained in section 1059 of the ZPO and de facto mirrors the grounds contained in the UNCITRAL Model Law. According to the aforementioned section, an arbitral award may be set aside only if the party filing the application shows sufficient cause that:

- one of the parties concluding the arbitration agreement did not have the capacity to do so, or that the arbitration agreement is not valid or, if the parties have not made any determinations in this regard, that it is invalid under German law;
- the party filing the application had not been given proper notice;
- the arbitral award deals with a dispute not contemplated by the separate arbitration agreement or not covered by the terms of the arbitration clause, or that it contains decisions that are beyond the scope of the arbitration agreement; and
- the formation of the arbitral tribunal or the arbitral proceedings was not in accordance with a provision of Book 10 of the ZPO or with an admissible agreement in place between the parties, and that this presumably has had an effect on the arbitral award.

As another option the court finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under German law;
- the recognition and enforcement of the arbitral award will lead to a result that is contrary to public policy (*ordre public*).

The application for setting aside the arbitral award must be filed with the court within three months. This period begins on the day on which the party filing the application has received the arbitral award.

According to section 1062 of the ZPO, the higher regional court designated in the arbitration agreement or, if no such designation was made, the higher regional court in the district of which the place of arbitration is located, is competent to decide on applications regarding the setting aside procedure. The decision of a higher regional court can be appealed to the Federal Court of Justice.

The general duration of the setting aside procedure and further appeal may vary from several months up to two years. The costs of the setting aside procedure also follow the 'cost follows the event' rule.

Law stated - 23 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The procedure of recognition and enforcement of arbitral awards expressed in Chapter 8 of Book 10 of the ZPO. It should be noted that the procedure for the enforcement of domestic arbitral awards and foreign arbitral awards is separate.

In accordance with section 1060 of the ZPO, compulsory enforcement of the domestic arbitral award may be pursued after the award has been declared enforceable. The application for a declaration of enforceability will be denied, and the arbitral award will be set aside, if one of the grounds for setting aside designated in section 1059(2) of ZPO is fulfilled.

The New York Convention governs the recognition and enforcement of foreign arbitral awards. Furthermore, where the declaration of enforceability will be denied, the court will establish in a declaratory ruling that the arbitral award is not to be recognised in Germany. However, in cases where the arbitral award is set aside abroad after being declared enforceable, an application may be filed seeking to repeal the declaration of enforceability.

Germany is a pro-arbitration jurisdiction, so domestic and foreign arbitral awards are generally declared enforceable in Germany if they do not have any manifest defects that would prevent them from being recognised.

For instance, German national courts will reject enforcement of a foreign award that was set aside by a competent court in another jurisdiction where an award was rendered. This approach was upheld in BGH Decision III ZB 14/07.

Book 10 of the ZPO does not specify a limitation period for enforcing arbitral awards. However, in applying substantive German law, a party may raise an objection to enforcing an arbitral award if 30 years have passed since the award was rendered.

Law stated - 23 May 2025

Costs

35 | Can a successful party recover its costs?

Pursuant to section 1057 of the ZPO, the arbitral tribunal should decide, in its arbitral award, on the share of the costs of the arbitral proceedings that each of the parties hold, including the costs incurred by the parties that were necessary to properly pursue their claim or defence.

In this context, the arbitral tribunal will decide at its discretion while taking into account the circumstances of the individual case, in particular the outcome of the proceedings. As mentioned in previous sections, under article 33.3 of the DIS Arbitration Rules, the arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion.

In general, the arbitral tribunals in Germany adopt a 'cost follows the event' method, meaning that the unsuccessful party must pay the successful party's costs. An arbitral

tribunal may render award on interest to the extent that the applicable substantive law of the dispute permits a claim for interests. The costs associated with enforcing awards vary based on the amount of the dispute, following the cost schedules for court and lawyer fees. Generally, the losing party should pay these costs.

Law stated - 23 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The German Arbitration Institute (DIS) is the leading institution in Germany in administering arbitration proceedings and other alternative dispute resolution proceedings for national and international commercial disputes.

Arbitration remains the primary ADR tool in Germany. According to the DIS annual statistic for 2023, from the total number of initiated proceedings in 2023 (191), 85 per cent were arbitration proceedings commenced under the DIS Arbitration Rules (163). Meanwhile, only seven proceedings were initiated in accordance with the DIS Mediation Rules. According to statistics, the DIS administers, on average, 250 arbitration proceedings at any given time and has successfully administered thousands of arbitration proceedings throughout its more than 100-year history.

For instance, the DIS can offer the parties:

- administration of arbitral proceedings under the DIS Arbitration Rules including Expedited Proceedings, Supplementary Rules for Corporate Disputes and Dispute Management Rules;
- administration of mediation proceedings under the DIS Mediation Rules;
- administration of adjudication proceedings under the DIS Adjudication Rules;
- administration of conciliation proceedings under the DIS Conciliation Rules;
- expert determination procedure under DIS Rules on Expert Determination;
- administration of arbitral proceedings under the DIS Sport Arbitration Rules; and
- Supplementary Rules for Third-Party Notices.

Law stated - 23 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There are no mandatory requirements that the parties to litigation or arbitration to consider ADR before initiating proceedings. However, parties can agree to a multi-tiered dispute resolution clause that would oblige them to first address ADR before initiation of litigation or arbitration proceedings.

For instance, in decision I ZB 50/15, the Federal Court of Justice (BGH) has expressed the standpoint that failure to comply with the mandatory terms of multi-tiered dispute resolution clauses does not lead to the arbitral tribunal's lack of jurisdiction, but may result the claim could be as 'currently unfounded'. This position was developed in a further BGH decision I ZB 1/15.

Furthermore, in accordance with section 278a of the Code of Civil Procedure, the court may suggest that the parties pursue mediation or other alternative conflict resolution procedures. If the parties decide to pursue mediation or other alternative conflict resolution procedures, the court shall order the proceedings stayed.

Law stated - 23 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

Law stated - 23 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Leading decision procedure

The leading decision procedure (*Leitentscheidungsverfahren*) was implemented in section 552b of the Code of Civil Procedure (ZPO) and came into force on 31 October 2024. According to this procedure, if the appeal raises legal issues whose resolution is relevant to numerous other proceedings, the Federal Court of Justice (BGH) may, upon receipt of a reply to the appeal or after one month from service of the grounds of appeal, designate the appeal proceedings as a leading decision procedure by order. The order shall describe the facts and legal issues whose resolution is relevant to numerous other proceedings. The leading decision procedure aims to set up the law harmonisation in specific complicated categories of cases. Nevertheless, the decision under such a procedure still would not have

a binding effect on the lower courts but should be treated as a guide for analogous cases. The very first decision under section 552b of the ZPO was already rendered by the BGH on 18 November 2024 (VI ZR 10/24) on the issue of claims for damages under article 82 of the EU 2016/679 General Data Protection Regulation.

Commercial courts

In 2024, the German parliament approved the Act to Strengthen the Jurisdiction of Germany, which came into force on 1 April 2025. The new law permits the German federal states to establish specialised courts for commercial matters in the form of commercial courts and commercial chambers within the higher regional courts. The parties to the dispute can agree to resolve the matter under the jurisdiction of such commercial court if the amount of civil dispute is at least €500,000. One of the main features of such courts and chambers is that proceedings should be in English.

Draft Bill to modernise Arbitration Law

German arbitration law was last substantially updated in the 1990s. Since then, the landscape of international arbitration and its peculiarities have undergone significant changes, which should certainly be reflected in the national legislation of Germany, which holds the position of an essential arbitration hub in the world. In response to the evolution of international commercial arbitration, on 26 June 2024, the German federal government published its draft bill on the modernisation of German arbitration law (Draft Bill).

The first substantive amendment in the Draft Bill addresses the form of the arbitration agreement. According to the current text of Book 10 of the ZPO, arbitration agreements should generally be concluded in written form. However, according to the Draft Bill, arbitration agreements could be concluded orally. Nevertheless, arbitration agreements with consumers still demand strict formal requirements and should be signed by the consumer.

Second, according to section 1063b of the Draft Bill, English-language documents originating from arbitral proceedings can be submitted to the German courts regarding the setting aside of proceedings without supplying a translation into German. A translation must be provided only where a particular need is given in the individual case.

Third, the Draft Bill proposes, in sections 1047 (2) and (3), discretionary legal provisions allowing oral hearings to be conducted via video conference hearings to clarify this manner of proceeding and further increase legal certainty in this regard.

Another major development that aims to promote publicity of arbitral proceedings is the possibility of publishing the arbitral award and, if applicable, any concurring or dissenting opinions of arbitrators with the parties' consent. Such publication can be made in anonymised form, in whole or in part.

Furthermore, the Draft Bill allows the possibility of setting aside a procedural award made by an arbitral tribunal that declares lack of jurisdiction if the party filing the application shows sufficient cause that the arbitral tribunal wrongly considered itself to lack jurisdiction.



The comprehensive character of the Draft Bill demonstrates the legislator's intention to substantially modernise German arbitration law and adapt it to the changes that have taken place in the field of international arbitration in recent years.

Law stated - 23 May 2025



RECHTSANWÄLTE
ATTORNEYS AT LAW

Nikita Gorjaev
Klaus Oblin

nikita.gorjaev@oblin.at
klaus.oblin@oblin.at

OBLIN Attorneys at Law

[Read more from this firm on Lexology](#)

Greece

Christos Paraskevopoulos

Bernitsas Law

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LITIGATION

Court system

1 | What is the structure of the civil court system?

In the first instance, Greek courts are subdivided into single-member and multi-member first instance courts. Though there are a lot of exceptions, depending on the nature and subject matter of the dispute, the general rule is that in ordinary civil proceedings single-member first instance courts are competent for monetary disputes up to €250,000.

By way of exception, single-member first instance courts are also competent for a number of disputes under ordinary or special (expeditious) proceedings based exclusively on their nature and subject matter, that is even if their value exceeds €250,000, in which case it would normally fall within the competence of multi-member first instance courts; such disputes consist, among others, in (1) lease disputes, (2) employment disputes, (3) disputes over the fees of freelance professionals, (4) disputes from car accidents, (5) disputes between apartment owners and/or building managers, (6) disputes from transport contracts as well as (7) family and matrimonial disputes. Payment orders or orders for surrender of the use of a leasehold are also issued by single-member first instance courts.

Multi-member first instance courts are competent for all disputes for which the single-member first instance courts are not competent.

For interim measures and uncontested ('voluntary') proceedings, as a rule, single-member first instance courts will have competence.

In the second instance, multi-member first instance courts have competence over appeals against the decisions of single-member first instance courts when the value of the dispute does not exceed €30,000, or for lease disputes, when the agreed monthly rent does not exceed €800; the single-member courts of appeal are competent for appeals against the decisions of single-member first instance courts, for which the multi-member first instance courts are not competent; and three-member courts of appeal are competent for hearing appeals against the decisions of multi-member first instance courts.

Finally, the Supreme Court (Areios Pagos) is competent for appeals in cassation (on points of law) against decisions of any civil court.

There are no specialist commercial or financial courts, but there are special commercial sections (for intellectual property and trademark disputes) in the ordinary procedure of the first instance and appeal courts, while special naval sections (in charge of naval disputes) have been established in the First Instance and Appeal Courts of Piraeus. According to article 13 of Law 4529/2018, another special commercial section is established to hear actions for damages under national law for infringements of the competition law provisions of EU member states.

Law stated - 22 May 2025

Judges and juries

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2 | What is the role of the judge and the jury in civil proceedings?

A Greek court, consisting of one or more judges, as the case may be, will act only at the request of a party and decide on the basis of the factual allegations raised and proven by the parties and their motions, unless otherwise provided by law. The court will also order, even ex officio, the evidence process by any applicable means of evidence that the law permits, even if these were not invoked by the parties. Any procedural acts are done at the initiative of the parties, unless otherwise provided by law. The court is obliged to encourage at any point of the trial and under any procedure the settlement of the dispute and the selection of mediation as an alternative dispute resolution (ADR) method, and to support any relevant initiatives of the parties and to formulate settlement proposals taking into account the factual and legal situation of each case. The judge will:

- conduct the hearing;
- give permission to the parties to speak;
- examine the parties, their legal representatives, witnesses and expert witnesses;
- seek clarifications by the parties on any allegations that are vague or incomplete;
- order at the request of any of the parties or ex officio anything that can contribute to the determination of the dispute, including ordering the parties themselves to be present and to answer questions or provide clarifications;
- declare if and when the hearing has been concluded; and
- issue the decision in due course.

In the voluntary procedure, the inquisitorial system applies and the court may order ex officio any measure suitable for ascertaining the facts, even if not raised by the parties, and especially facts that contribute to the protection of the interested parties, their relationship or the greater public interest.

There is no jury in Greek civil proceedings.

Law stated - 22 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Unless otherwise provided by Greek law, the standard limitation period for bringing civil claims is 20 years. However, a shorter limitation period of five years is provided for certain categories of claims, including:

- the claims of merchants and manufacturers for the sale of goods, the execution of works, taking care of the affairs of others and their expenses;
- the claims of farmers, fishermen and others for the sale of the products of their profession;
- the claims of transporters of people or goods for freight and their expenses;

- the claims of hotel, B&B and other owners for the provision of lodging, food and other services, as well as their expenses;
- the claims of those that do not belong in the above categories but take care of the affairs of others or provide services by profession for their fees and expenses;
- the claims of servants and workers for the payment of their wages and expenses;
- the claims of teachers for their fees and costs;
- the claims of institutions for the provision of teaching, fostering, hospitalisation and caretaking, for the provision of their services and their costs;
- the claims of those that take care, foster and raise people, for their services provided and their costs;
- the claims of doctors, nurses, lawyers, notaries, court bailiffs and persons appointed to conduct the affairs of others, for their fees and expenses;
- the claims of the litigants for any prepayments made to their lawyers;
- the claims of factual and expert witnesses for their fees and expenses;
- interest and dividends;
- any rents;
- all kinds of wages, late amount due, pensions, alimonies or payment made periodically; and
- the claims of persons to whom work is provided for their prepayments made against future claims.

Any limitation period is interrupted if the debtor recognises the claim in any way and if an action is filed before the Greek courts. The parties cannot agree to disapply the statute of limitation or to set a longer or shorter limitation period or to make the terms of the statute of limitation harsher or lighter. However, it is possible to waive the right to invoke the statute of limitations after that time has lapsed.

Owing to the covid-19 pandemic, by law, all limitation periods were suspended from 13 March 2020 to 31 May 2020 as well as from 7 November 2020 to 5 April 2021.

Law stated - 22 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

By means of articles 3, 6 and 7 of Law 4640/2019 published on 29 November 2019, as amended and in force, before making a submission to a court, authorised attorneys must notify their clients in writing of the possibility to resolve a dispute, in whole or in part, via mediation. This obligation applies to any civil and commercial disputes of a national or cross-border nature, existing or future, which are at the parties' disposal. In addition, for disputes falling under the mandatory scheme, authorised attorneys must notify their clients in writing of their obligation to attend a mandatory initial mediation session. Those attorneys' informative notes must be attached to the civil action and submitted to the court. If the

attorneys' informative notes are not submitted to the court at the time of filing of the civil action, they must be produced by the time of submission of the claimant's written pleadings and no later than the hearing. The mediation minutes drafted by the mediator must also be produced by the time of submission of the pleadings. If the claimant does not meet either of the aforementioned obligations, the hearing of the case is declared by the court as inadmissible.

As regards the steps available to a party to assist in bringing an action, although pre-action exchange of documents is not provided in Greek law, a party can request the production of documents either during the pending trial proceedings or even before, by means of a separate legal action or an application for interim measures in urgent cases, provided that the party making this request pre-action has a legal interest to be informed of the content of a document in the possession of another, that is, if the document was drafted in the interest of the party requesting it or certifies a legal relationship that relates to him or her or relates to negotiations for that legal relationship entered into by the applicant or a third party intervening for the latter.

Law stated - 22 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Proceedings are commenced when the writ of action is submitted before the court secretariat where it is addressed or is submitted electronically and a copy thereof is served on the defendant.

Greek courts have a long history of issues with handling the caseload in a timely manner and, in spite of a number of reforms and initiatives attempted, those issues remain to a great extent. The last major reform was through Law 4335/2015, effective as of 1 January 2016, which has undergone various amendments, the last of which were effective as of 1 January 2022, and which provided, inter alia, for the abolition of witness examination during the hearings, as this was thought to cause delays, and for new, shorter timetables.

he initiation of proceedings before a Greek court involves two types of fees:

- A judicial duty payable to the state for the provision of legal redress. Judicial duty amounts to 8 per cent of the value of the disputed subject matter (which, subject to legal surcharges, amounts to a total of 11.0304 per cent). It is required for the filing of actions for performance as well as actions for declaratory relief that fall under the jurisdiction of the multi-member court of first instance and must be paid no later than the hearing of the action in the first instance. Failure to pay the judicial duty results in a judgment by default against the plaintiff and the dismissal of the action on its merits.
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A pre-collection fee of the legal representative's contributions to the bar association of which they are member. This is a fixed fee payable for every procedural act or representation by a lawyer, including the filing of any kind of legal remedy.

Law stated - 22 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

A claim that is heard under ordinary proceedings must be served to the defendant within 30 days or, if the defendant resides abroad or is of unknown address, within 60 days. Written pleadings, together with any supporting documentation, powers of attorney, affidavits, exhibits, etc, drafted in Greek or together with their (full or partial, as the case may be) legal translation in Greek, must be filed by the parties within 90 days, or, if the defendant resides abroad or is of unknown address, within 120 days of the above deadline of the claim's service to the defendant. Additional pleadings and rebuttals can be filed 15 days after the filing of the pleadings, together with any additional documentation. Both the filing of pleadings and rebuttals must take place no later than 12pm on the last day of the above-mentioned deadlines. Subsequent to the above deadlines, allegations or allegations evidenced via documents or judicial confession may be filed through additional pleadings 20 days prior to the hearing at the latest. The rebuttal to the above additional pleadings must be filed 10 days prior to the set hearing at the latest. Interventions (joinders), summonses to the trial, announcements of the trial or counteractions are filed and served on all parties within 60 days, or, if the defendant or any of his or her joinders reside abroad or are of unknown address, within 90 days of the filing of the claim. Interventions made after a summons to the trial, or an announcement of the trial, must be filed and served on all parties within 90 days, or, if the defendant or any of his or her joinders reside abroad or are of unknown address, within 120 days of the filing of the claim. Within 15 days of the closing of the case file, the judge (or in the case of a multi-member court, the panel of the court and its judge rapporteur) must be appointed and the hearing date must be set no later than 30 days after the above deadline, or if this is not possible because of the caseload of the court, at a later date, as necessary. This 30-day deadline for setting the hearing date is in practice not met by most Greek courts because of their caseload, and delays, ranging from a couple of months to up to one year in some cases, have unfortunately become the norm. The courts' decisions are in writing and are issued after the hearings, usually between three to eight months thereafter.

Law stated - 22 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The court's lack of jurisdiction may be invoked by the parties only by means of an objection in their pleadings or at the hearing, depending on the nature of the proceedings. An objection for lack of jurisdiction may be raised at any step of the proceedings and, if upheld by the court, may lead to the dismissal of the action as inadmissible.

In addition, Greek civil courts also investigate both their domestic and international jurisdiction *ex officio*. The lack of international jurisdiction in particular, is only investigated *ex officio* in cases where the defendant is not present at the hearing or there can be no tacit derogation of jurisdiction.

The above does not apply in cases where Greek courts lack jurisdiction due to a dispute having been submitted to arbitration. In these cases, the lack of jurisdiction is not taken *ex officio* into account by the court but has to be argued by objection at the first hearing of the case otherwise such objection becomes inadmissible. Where the court holds itself to be without jurisdiction due to the dispute being subject to arbitration, it refers the case to the arbitral tribunal without dismissing the action.

Finally, in Greek procedural law, there is no equivalent institution to that of "anti-suit orders".

Law stated - 22 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties can extend the timetable of the procedure, that is, the relevant deadlines set by law or by the court, if the parties agree to that and only if the court also agrees, or if the court so decides absent any agreement of the parties, taking into account the circumstances of each case. Extending deadlines for judicial remedies is not possible.

In addition, at the request of one of the parties, the judge or the court, as the case may be, may also decide to shorten the legal deadlines if there are serious reasons and the deadline is not one for filing an appeal. The parties can also agree to shorten the legal or court deadlines.

As regards the hearing date in particular, any party may submit a written preference request for the scheduling of a different hearing date from the one that is to be or has already been set for an action, application or remedy. The application states the reasons for the request and the competent judge decides on the preference by means of a reasoned act.

Postponement of the hearing to a later date is in principle not possible in ordinary proceedings but may be granted once in special proceedings and voluntary jurisdiction, at the request of any of the parties provided there is good cause. In practice, the parties often circumvent this rule by not appearing at the hearing, thus leading to its cancellation. For a new hearing date to be set, a writ of summons is filed by the most diligent of the parties.

Law stated - 22 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no specific duty under Greek procedural rules to preserve documents and other evidence pending trial. There is a general duty on the parties and their attorneys to conduct the proceedings in good faith and to set out the facts as they know them, fully and truthfully. The parties and their attorneys are also expected to contribute, with their diligent conduct of the trial and the timely raising of argumentation and submission of means of evidence, to the expedition of the trial and the speedy resolution of the dispute.

Law stated - 22 May 2025

Evidence – privilege

- 10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Although the notion of privilege exists in Greek law, there are no specific rules in Greek civil procedural law determining whether a document can be characterised as privileged or not. That said, it is specifically provided in the Greek Code of Civil Procedure that priests, lawyers, notaries, doctors, pharmacists, nurses, psychologists and their aides, as well as any advisers of the parties, cannot be examined, when summoned as witnesses, on the facts that were entrusted to them or they ascertained during the exercise of their profession, for which they have a confidentiality obligation, unless the party entrusting the same to them and to whom the secrecy relates allows it. Public officials and military personnel, in service or retired, cannot be examined as witnesses for facts for which they have a confidentiality obligation, unless the competent minister allows their examination. In any event, priests, lawyers, notaries, doctors, pharmacists, nurses and their aides, as well as any advisers of the parties, are entitled to refuse to be examined as witnesses on the facts that were entrusted to them. Relatives up to the third degree (unless they have the same relation to all parties), spouses (even after the dissolution of their marriage) and those engaged to be married may also refuse to testify. Lastly, any witness may refuse to testify facts that constitute professional or artistic privilege.

In view of the above, documents containing privileged information are not expected, as a matter of Greek law and practice, to be shown to the other party, and any request to the court either to examine as a witness a person covered by privilege or to force a party to produce documents that contain privileged information is not likely in the majority of cases to be accepted.

Law stated - 22 May 2025

Evidence – pretrial

- 11 | Do parties exchange written evidence from witnesses and experts prior to trial?

The parties have the right to examine under oath witnesses prior to trial before notaries, lawyers or Greek consulates (if the testimony is given outside of Greece). They have a duty to summon the other party to attend, if they wish, the execution of such testimony under oath (affidavit), at least two business days before, and to include in such summons the exact date and place of execution of the affidavit to be given, the action or brief to which it refers, and the name, address and profession of the affiant. The party summoned may obtain a copy of the affidavit at any time after its execution or at the time of its submission to the court by the opponent, together with the latter's pleadings and supporting documentation.

Law stated - 22 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence is presented to the court by means of each party's pleadings and additional pleadings and rebuttals, which are filed together with each party's supporting documentation. In respect of claims that were filed after 1 January 2016 that are heard in the ordinary procedure, witnesses and experts no longer provide oral testimonies, which have effectively been substituted by written testimonies under oath (affidavits) executed before notaries, lawyers or Greek consulates (if the testimony is given outside of Greece). If, after the review of the case file, it is found by the court that the oral testimony of one affiant from each side or, in the absence thereof, of one person proposed by each side, is absolutely required, then an order to repeat the hearing for the purposes of such oral testimony will be given by the court. Witnesses and experts can still give oral evidence in cases heard under special proceedings, the voluntary procedure or interim measures proceedings.

Law stated - 22 May 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies are available and include:

- the ordering of security for a monetary claim;
- the registration of a prenotation of mortgage;
- the conservatory seizure of movables, immovables, rights in rem thereon, claims and all assets of the debtor either in his or her hands or in the hands of third parties;
- the placement in judicial escrow (custody) of movables, immovables, a group of objects or of a business in the event of a dispute pertaining thereto, such as for their legal ownership or possession;
- the temporary adjudication of certain categories of claims;
-

the temporary regulation of a situation via the court's order to do, omit or tolerate a certain act by the party against which the application has been filed;

- the sealing, unsealing, signing or public deposit; and
- the issuance of a European Account Preservation Order pursuant to Regulation (EU) No. 655/2014.

The above remedies are available in support of foreign proceedings provided that the local Greek courts have jurisdiction to order the interim relief sought.

Law stated - 22 May 2025

Remedies

14 | What substantive remedies are available?

Substantive remedies include:

- compensatory damages to the injured party for any loss that he or she has suffered;
- restitution in the form of monetary recovery or recovery of property;
- specific performance obliging a party to perform its contractual obligations after a breach has been established; and
- a declaratory judgment declaring the rights or obligations of one party.

Punitive damages, however, are not available under Greek law. In the case of a monetary claim and when the debtor is late in payment, the creditor is entitled to claim the interest provided by contract or by law, without being obliged to prove any damage. In addition to interest, the creditor may also claim, unless otherwise provided by law, any other positive damage that he or she has suffered. In those cases, interest is payable on a money judgment provided that it is formally requested by the court.

Law stated - 22 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The parties may attempt to settle a dispute while it is pending and up until the delivery of a final judgment, provided it is a private law dispute for which settlement is permitted under substantive law; such is the case insofar as the parties have the power to dispose of the matter in dispute.

Settlement is accomplished by means of a declaration before the court or a notarial deed or a deed of conciliation approved by the single or the presiding judge of the court before which the action or legal remedy is pending. The deed of conciliation must set out the content of the agreement and in particular the nature of the right acknowledged, the value

of the performance due and any conditions under which it must be fulfilled, as well as a provision for legal costs. Once the above requirements are met, the proceedings are automatically terminated without a court judgment and the settlement may serve as an enforceable instrument.

There are no further procedural rules governing the parties' discussions in their attempt to reach a settlement.

Since the court does not intervene until after the parties have reached a settlement agreement and only upon their own initiative to grant the settlement agreement the force of res judicata, the parties' discussions are essentially confidential.

The parties may also choose to keep the content of the settlement agreement confidential by not adhering to the above formal requirements and by proceeding to an out-of-court settlement. In this case, for the pending trial proceeds to be terminated, a waiver must be filed by the party initiating the proceedings.

Law stated - 22 May 2025

Enforcement

16 | What means of enforcement are available?

Enforcement under Greek law includes the following means:

- in the case of an obligation to surrender a movable, by the court bailiff taking such movable from the person against which enforcement is made and the delivery thereof to the appropriate person;
- in the case of an obligation to provide replaceable items or anonymous securities, via the court bailiff taking such items or securities from the person against which enforcement is made and the delivery thereof to the appropriate person;
- in the case of an obligation to provide or surrender an immovable property, ship or aircraft, via the court bailiff expelling the person against which enforcement is made from such immovable property, ship or aircraft and establishing thereon the appropriate person;
- in the case of an act that can be done by a third party, via the creditor doing such act and the relevant cost being incurred by the debtor;
- in the case of an act that can only be done by the debtor, via the court condemning the latter to do such act and in the event that it is not done condemning same to a monetary penalty of up to €50,000 in favour of the creditor and to personal detainment of up to one year;
- if the debtor has the obligation to omit or tolerate an act, via a court threatening, in the event that the debtor violates his or her obligation, a monetary penalty of up to €100,000 in favour of the creditor for each violation and to personal detainment of up to one year;
-

if someone is condemned to a declaration of his or her will (intention), such declaration is considered to have been made when the court's decision became final and unappealable;

- in the case of an obligation to surrender a child, via the court condemning the parent in possession of such child to surrender same under penalty, and in case of such non-compliance, of a monetary penalty of up to €100,000 in favour of the party requesting the child's surrender and to personal detainment of up to one year;
- in the case of a monetary claim that must be satisfied, via the seizure of the property against which enforcement is made or via compulsory administration or personal detainment; and
- if the creditor's claim cannot be fully satisfied via any imposed seizure of the debtor's property, via obliging the debtor to submit under oath to the court a detailed list of all his or her assets, with their exact location.

Law stated - 22 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Civil court hearings in Greece are held in public and only the deliberation for the issuance of the court's decision is made in secret. The judge conducting the hearing may determine in his or her judgment the number of persons that can stay within the courtroom and has the power to order the exclusion of minors, persons carrying arms, as well as those that do not behave well in court.

In exceptional circumstances, the court may, at the request of one of the parties or ex officio, order that the entire hearing or part thereof be conducted in closed session if this might be prejudicial to good morals, public policy or the parties' fundamental civil rights. The parties, their legal representatives, attorneys and technical experts are in any case entitled to be present.

The hearing may be conducted in private, especially in cases where there is a risk for:

- public morality (eg, in cases of heinous offences);
- public order and national security (eg, cases involving military secrets or materials that are likely to be used for terrorist acts);
- the parties' privacy *stricto sensu*;
- family life (eg, adoption proceedings, legal assistance, involuntary hospitalisation) and the integrity of minors; or
- business confidentiality.

In any event, under the current legal framework, publicity between the parties cannot be compromised for reasons of protection of business confidentiality.

Pretrial proceedings and any proceedings outside court are not public, although the parties, their legal representatives and attorneys may attend. Any court documents filed with the court are not available to the public, but only to the parties, their legal representatives and attorneys.

Law stated - 22 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The court has the power to order costs, and as a rule it is the losing party that is condemned by the court to pay the costs of the winning party. In the case of partial victory and partial defeat of each party, the court will assess the costs according to the extent of their respective victory and defeat. The court can also offset all costs or part thereof when the dispute is between relatives up to the second degree or if it finds that the interpretation of the rule of law that was applied was especially difficult or there is reasonable doubt regarding the outcome of the dispute. For the purposes of the court determining and clearing the amount of costs that should be awarded, each side must produce a table with his or her respective costs.

The claimant is not required by law to provide security for the defendant's costs, but the defendant can make such a request to the court and the court may order security for costs if there is an obvious danger of inability to enforce the court's decision, condemning a plaintiff to pay costs.

Law stated - 22 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No win, no fee' agreements and other similar types of contingency or conditional fee arrangements between lawyers and their clients are available to parties in Greece. In the case of such an agreement, the agreed fee cannot exceed 20 per cent of the value of the dispute and, if more than one lawyer is involved, 30 per cent. The agreement must be made in writing and must be duly filed with the local bar association of the lawyer that has concluded the agreement. It will be valid only if the lawyer has undertaken the obligation to carry out the trial until the court's decision has become final and unappealable, without the lawyer being entitled to any fee in the case of defeat. Any agreement between the parties for expenses does not overturn the validity of that fee arrangement.

As regards third-party funding, to date it is not directly regulated in Greek law. In the absence of any legislative provision to the contrary and in view of the general principle of contractual freedom, which is respected in Greek law, third-party funding is likely to be viewed as permissible if and to the extent that there are no provisions in the funding agreement that contravene the law.

Law stated - 22 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Yes, such insurance is available, subject to the risk profile in question and the amount of coverage.

Law stated - 22 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Greek law provides for simple and forced collective redress.

In the case of simple collective redress, more than one person can lodge a claim (or face a claim) if they have the same common rights or obligation or if their rights and obligations are based on the same factual and legal cause, or if the subjects of the dispute are claims or obligations of the same kind or obligations based on materially the same historical and legal basis and the court has competence upon each defendant.

Collective redress will be forced when the dispute requires a uniform way of resolution or if the parties can only jointly bring or face a claim or when, because of the circumstances of the case, there cannot be contrary decisions towards the parties. The litigants that do not legally participate in the trial or have been summoned to attend the same will be deemed to be represented by those attending.

In addition to the above, it is also possible under Greek law for consumer unions to bring a class action against suppliers that violate the law. Effective from 25 June 2023, the Greek legislative framework on the protection of consumers' collective interests was aligned with the provisions of Directive 2020/1828, initiating the representative actions mechanism. Representative actions can be raised by Consumer Associations in relation to a list of infringements specified in Annex II of the Directive and may take the form of injunctive measures against suppliers to cease or prohibit a particular practice even before it occurs or redress measures, including compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid by the consumer. The court competent to hear a representative action is the multi-member first instance court of the place of residence or registered offices of the defendant supplier.

Law stated - 22 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The parties can appeal a decision if they were wholly or partially defeated in the first instance and if the decision was erroneous in fact or in law. The decisions that can be appealed are both those of the single-member and multi-member first instance courts. Only decisions that are either final or refer the dispute to the competent court can be appealed. The deadline for the filing of an appeal is 30 days from the service of the first instance decision or, if the appellant resides outside Greece or is of unknown residence, 60 days. If the decision has not been served, then the appeal deadline is two years from the publication of the first instance decision. During the time period for the filing of the appeal, the first instance decision cannot be enforced, unless the decision was declared by the first instance court as temporarily enforceable against the losing party. An appeal that has been duly filed will also suspend enforcement of the first instance decision, except for any first instance decision that was declared temporarily enforceable against the losing party.

The court will first examine the admissibility of the appeal, then examine the admissibility and soundness of its grounds, and if any of the appeal grounds is found to be sound, the first instance decision will be quashed and the appeal court will keep the case and decide on its merits. The appeal court cannot render a decision that is more detrimental to the appellant if the opponent has not filed its own appeal or counter-appeal. However, the appeal court can render a decision that is more detrimental to the appellant if it quashes the first instance decision and goes ahead with ruling on the merits.

A further appeal in cassation is possible before the Supreme Court, but only on points of law, not fact. The deadline for the filing of such further appeal is 30 days from the service of the appealed decision or, if the appellant resides outside Greece or is of unknown residence, 60 days. If the decision has not been served, then the appeal in cassation deadline is two years from the publication of the decision.

Law stated - 22 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Reciprocal agreements for the recognition and enforcement of judgments exist between Greece and the following countries:

- Albania, Armenia, Bulgaria, Germany, Georgia, the successor states of Yugoslavia, China, Cyprus, Lebanon, Hungary, Ukraine, Poland, Romania, the successor states of the USSR, the successor states of Czechoslovakia, Syria, Tunisia, Switzerland, Norway and Iceland (for the [Lugano Convention on jurisdiction and the recognition](#)

[and enforcement of judgments in civil and commercial matters](#) of 30 October 2007);

- all contracting states to the [Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations](#);
- all contracting states to the [Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption](#);
- all contracting states to the [Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#);
- all contracting states, including the UK post-Brexit, to the [Hague Convention on Choice of Court Agreements 2005](#) (the Hague Convention 2005);
- all contracting states, including the UK post-Brexit, to the [Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance](#);
- all contracting states to the [Convention on the Contract for the International Carriage of Goods by Road \(CMR\)](#) (Geneva, 19 May 1956);
- all contracting states to the [UNCITRAL Model Law on Cross-Border Insolvency](#) of 30 May 1997;
- all contracting states to the [Convention concerning International Carriage by Rail \(COTIF\)](#) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999; and
- all contracting states to the [European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children](#) (9 May 1980).

If no international agreement (multilateral or bilateral) exists or if the Regulation of the European Union does not apply to the recognition or enforcement of a certain foreign judgment, that judgment will be recognised and enforced in Greece pursuant to the Greek Code of Civil Procedure (GCCP) (Presidential Decree No. 503/1985, as amended and in force today). However, if an international agreement is in place or if the Regulation of the European Union is applicable, the rules of such agreement or EU Regulation will supersede and disapply the GCCP.

If the GCCP applies, the following rules and process may come into play.

First, as regards recognition of a foreign judgment issued pursuant to a disputes procedure, pursuant to article 323 GCCP and subject to what international treaties (multilateral or bilateral) or EU regulations provide (if there is any international treaty (multilateral or bilateral) or regulation of the European Union that applies to the foreign judgment in question, the rules of such treaty or EU regulation will supersede and disapply the GCCP), that judgment is recognised to have force and constitute *res judicata* in Greece without any other procedure, provided that:

- it constitutes *res judicata* according to the law of the country of issuance;

- under the provisions of Greek law, the case was subject to the jurisdiction of the courts of the country to which the court that issued the judgment belongs;
- the party who lost was not deprived of the right to a defence and, in general, of the right to participate in the trial, unless that right was deprived according to a provision that applies equally to the subjects of the country to which the court that issued the judgment belongs;
- it is not contrary to a judgment of a Greek court that was issued in the same case and that constitutes *res judicata* for the parties between which the judgment of the foreign court was issued; and
- it is not contrary to good morals or to public policy.

Although recognition of a foreign judgment is *ipso jure*, that is, without any procedure, provided that the conditions set out in article 323 GCCP are met, there is also the possibility, if there is any legal interest in doing so, to file a civil action seeking a declaratory judgment on whether the *res judicata* of a foreign judgment has or does not have effect in Greece.

Second, as regards recognition of a foreign judgment issued pursuant to the voluntary (uncontested cases) procedure, pursuant to article 780 GCCP and subject to what international treaties (multilateral or bilateral) or EU regulations provide (again, if there is any international treaty (multilateral or bilateral) or regulation of the European Union that applies to the foreign judgment in question, the rules of such treaty or EU regulation will supersede and disapply the GCCP), it shall *ipso jure* have the same force and effect in Greece as that recognised to it under the law of the country of the court that issued it, provided that:

- the judgment applied the substantive law that should be applied under Greek law and was issued by a court that had jurisdiction pursuant to the law of the country whose substantive law it applied; and
- it is not contrary to good morals or to public policy.

Third, as regards recognition of a foreign judgment relating to the personal status of a party, pursuant to article 905, paragraph 4 GCCP and subject to what international treaties (multilateral or bilateral) or EU regulations provide (again, if there is any international treaty (multilateral or bilateral) or regulation of the European Union that applies to the foreign judgment in question, the rules of such treaty or EU regulation will supersede and disapply the GCCP), that judgment shall not *ipso jure* have *res judicata* effect in Greece, unlike what is provided under articles 323 and 780 GCCP. For this judgment to acquire that effect, it must be recognised by a judgment issued by the competent Greek single-member first instance court. A foreign judgment will be recognised if:

- it is enforceable pursuant to the law of the country of issuance;
- it is not contrary to good morals or public policy; and
- it meets the conditions of article 323(ii)–(v) GCCP.

As regards enforcement of a foreign judgment, pursuant to article 905 GCCP and subject to what international treaties and EU regulations provide, a foreign judgment can be enforced in Greece after it has been declared enforceable by a judgment of the single-member first instance court of the district within which the domicile of the debtor is or, if there is

no domicile, of the debtor's residence, or, if there is no residence, of the Single-Member First Instance Court of Athens. A foreign judgment will be declared enforceable by the competent Greek single-member first instance court pursuant to the above procedure if it is enforceable pursuant to the law of the country of issuance and if it is not contrary to good morals or the public policy of Greece. Finally, for a foreign judgment to be declared enforceable, the conditions of article 323(ii)–(v) GCCP must also be met.

Law stated - 22 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Yes, for civil and commercial matters, this is possible on the basis of Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

Law stated - 22 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Law 5016/2023 on International Commercial Arbitration, applicable to international commercial arbitration proceedings seated in Greece, is the legal act incorporating in its entirety the UNCITRAL Model Law in Greek legislation. It abolishes the preceding legal framework (L. 2735/1999), which was not in harmony with the latest amendments of the Model Law adopted by UNCITRAL in July 2006.

The GCCP, and in particular articles 867–903, applies to domestic arbitration proceedings and has not been adopted in accordance with the UNCITRAL Model Law.

Law stated - 22 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement should be in compliance with article 10 of Law 5016/2023, with regard to international commercial arbitration, and article 869 GCCP, with regard to domestic arbitration. Both provisions require the agreement to be written, either in document or in electronic form of any kind. However, the lack of a written agreement may be resolved if both parties participate in the proceedings without expressing any objections or reservations.

Law stated - 22 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In international commercial arbitration, in the absence of any relevant agreement of the parties, the arbitral tribunal shall consist of three arbitrators (article 14 of Law 5016/2023). Each party shall appoint one arbitrator and the two arbitrators shall appoint the third one. If a party does not appoint an arbitrator within 30 days from the receipt of such a request from the other party, or the two arbitrators, appointed by the parties, cannot agree to the appointment of the third one within 30 days of their appointment, any party may request the intervention of the competent single-member court of first instance to make such appointment (article 15, paragraph 4(a) of Law 5016/2023). The same procedure applies if the arbitral tribunal is composed of a single arbitrator and the parties do not agree on his or her selection.

Article 18(2) of Law 5016/2023 provides that an arbitrator may be validly challenged only for justifiable doubts as to his or her impartiality, independence or possession of the qualifications agreed to by the parties. A party may even challenge an arbitrator appointed by itself, or in whose appointment it has participated, but solely for reasons of which it became aware after the appointment had been made.

In domestic arbitration, in the absence of any relevant agreement by the parties, each party may invite in writing the other party to appoint an arbitrator within at least eight days, mentioning in the same document the arbitrator it appoints. Each arbitrator is notified of the name and the address of the other arbitrator. Within 15 days of the last of the aforementioned notifications, the two arbitrators shall appoint the presiding arbitrator and announce such appointment to the parties (articles 872–874 GCCP). If any of the aforementioned appointments fail to be completed within the deadlines provided, any party may request the intervention of the competent single-member court of first instance to make such an appointment (article 878 paragraph 1 GCCP).

In domestic arbitration, the arbitrators may be challenged for reasons related to their prior involvement in the case, any interest they may have in the arbitration, their family relation to the parties or any relationship they may have to the parties that creates any suspicion of bias and their entire or partial incapacity to contract or deprivation of political rights. The party challenging the arbitrator is able to invoke only reasons of which it became aware after the appointment of the arbitrator took place (article 883, paragraph 2 GCCP).

Law stated - 22 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Subject to the grounds for challenging an arbitrator (that is, for justifiable doubts as to his or her impartiality, independence or possession of the qualifications agreed to by the parties; or, in domestic arbitration, for reasons related to their prior involvement in the case, any interest they may have in the arbitration, their family relation to the parties or any relationship they may have to the parties that creates any suspicion of bias and their entire or partial incapacity to contract or deprivation of political rights), and any requirements set out by the parties in the arbitration agreement, the parties, any appointing authority or the court are not restricted when appointing the arbitrators. In domestic arbitration, article 871A GCCP provides for specific requirements when judges are selected as arbitrators. In addition, Greek legislation does not place any restrictions on appointing non-nationals as arbitrators in either international commercial or domestic arbitration.

However, there are certain requirements for the appointment of arbitrators over disputes arising from contracts concluded with the state or state entities in both international and domestic arbitration. In particular, the state's arbitrator should be only a senior magistrate, a senior member of the State Legal Council, a university professor or a Supreme Court lawyer.

Law stated - 22 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Pursuant to articles 27 of Law 5016/2023 and 886 GCCP, the arbitral tribunal is free to conduct the arbitration in an appropriate manner, subject to any requirements agreed to by the parties. However, the aforementioned power of the arbitrators is restricted by articles 26 of Law 5016/2023 and 886(2) GCCP, which provide that the parties shall be treated with equality and be given a full opportunity of presenting their case (ie, attending the hearings, submitting and elaborating on their claims, and submitting their evidence). In addition, any other rules considered as public policy rules are mandatory in all cases and cannot be excluded by means of the arbitration agreement (article 890(2) GCCP).

Law stated - 22 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

In both international commercial and domestic arbitration, the court's intervention is mainly reserved for cases where the arbitration is at a standstill and the parties or the arbitrators address a relevant request to the court.

First of all, the competent single-member court of first instance may intervene in the arbitration, upon the request of one of the parties, if the arbitrators' selection mechanism

agreed by the parties fails, unless the parties' agreement provides otherwise for securing such selection (article 15 (4)(a) of Law 5016/2023), or if the parties or the arbitrators have failed to appoint an arbitrator, or the presiding arbitrator respectively, within the provided deadlines (articles 15 (4)(a-b) of Law 5016/2023 and 878(1) GCCP). The court's decision on the appointment of an arbitrator is not subject to appeal (articles 15(6) of Law 5016/2023 and 878(3) GCCP).

In addition, in international commercial arbitration, if the challenge of an arbitrator, under any procedure agreed upon by the parties or under the procedure provided by law (ie, withdrawal of the challenged arbitrator, other party's agreement to the challenge, or the arbitral tribunal's decision on the challenge) is not successful, the challenging party may request, within 30 days of having received notice of the decision rejecting the challenge, the competent single-member court of first instance to decide on the challenge, whose decision shall not be subject to appeal. Pending such a request, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and issue an award (article 19(3) of Law 5016/2023). In domestic arbitration, it is the competent single-member court of first instance that decides upon such a challenge in the first place, while such decision is not subject to appeal and the arbitrators postpone the adjudication of the case until the issuance of the court's decision (article 883(2) GCCP). Despite the aforementioned provision, it is accepted that the arbitral tribunal is not obliged to postpone the arbitration, precisely to safeguard the velocity of the arbitral procedure, which is one of its main advantages. In such a case, the arbitral award would be subject to annulment only if the request for challenging the arbitrator was finally accepted by the court.

In international commercial arbitration, if an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, and if any controversy remains concerning any of these grounds, any party may request the competent single-member court of first instance to decide on the termination of his or her mandate, whose decision shall not be subject to appeal (article 20(1) of Law 5016/2023). If the court accepts that request, the appointment of a substitute arbitrator is effected according to the rules applicable to the arbitrator being replaced (article 21(1) of Law 5016/2023).

With respect to domestic arbitration, article 880 GCCP provides that any arbitrator or presiding arbitrator who initially accepted his or her appointment may subsequently decline to perform his or her duties for exceptional reasons, upon being granted the court's permission. Permission is granted by the competent single-member court of first instance, upon examination of the arbitrator's or any party's request, in ex parte proceedings. Such decision is not subject to appeal. Article 884 GCCP also allows any of the parties to request the competent court of first instance to order a reasonable deadline for the delivery of the award if the arbitral proceedings or the issuance of the award are delayed and the arbitral agreement does not set out any such deadline.

Finally, pursuant to article 13 of Law 5016/2023, the arbitration agreement does not prevent a regular court from granting interim relief, before or during the arbitral proceedings. What's more, if a party does not comply voluntarily with the interim relief ordered by the arbitral tribunal, in international commercial arbitration, the other party may resort to the competent court requesting the recognition and enforcement of the imposed interim relief. In domestic arbitration, regular courts have exclusive jurisdiction in granting interim relief, and any

agreement between the parties to the contrary is considered null and void (articles 685 and 889 GCCP).

Law stated - 22 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

In relation to international arbitration, article 25 of Law 5016/2023 provides that, unless otherwise agreed by the parties, the arbitral tribunal may, upon request of one of the parties, order any interim relief considered necessary in relation to the nature of the dispute. The arbitral tribunal may order any of the parties to provide security in relation to such relief. In circumstances of extreme urgency, the arbitral tribunal may also, at the request of either party, issue a provisional order to regulate matters until a decision on the interim relief has been rendered.

If a party does not comply voluntarily with the interim relief ordered by the arbitral tribunal, the other party may resort to the competent court requesting the imposition of interim relief.

In domestic arbitration, arbitral tribunals are explicitly prohibited from granting interim relief, and any such agreement between the parties is considered null and void (articles 685 and 889 GCCP).

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Law stated - 22 May 2025

Award

32 | When and in what form must the award be delivered?

Greek law does not impose any time limits that the tribunal should respect for the delivery of the arbitral award. However, as regards domestic arbitration, article 884 GCCP allows any of the parties to request the competent court of first instance to order a reasonable deadline for the delivery of the award if the arbitral proceedings or the issuance of the award

are delayed and the arbitral agreement does not set out any such deadline. No relevant provision exists with regard to international commercial arbitration.

Under article 40 of Law 5016/2023, the award must be in writing, signed by the arbitrator or arbitrators, and must contain the grounds for the ruling, unless otherwise agreed by the parties or the award is an award on agreed terms. The arbitral award must also state the date and place of the arbitration, and the original must be delivered to each party. The above requirements, together with the statement of the full names of the arbitrators and parties to the arbitration agreement, should be respected in relation to domestic arbitration as well, pursuant to article 892 GCCP. As opposed to international commercial arbitration, in domestic arbitration, the delivery of copies of the arbitration award to the parties is sufficient (article 893(2) GCCP).

Pursuant to article 41(5) of Law 5016/2023, unless otherwise agreed by the parties and if the award is to be enforced in Greece, the arbitrator or one of the arbitrators (appointed by the tribunal) is obliged to file the original of the award with the secretariat of the competent court of first instance. The same obligation exists under domestic arbitration (article 893(2) GCCP).

Law stated - 22 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

In principle, arbitral awards are not subject to appeal (ie, challenge on the merits), but the parties have the power to agree recourse against the award before another arbitral tribunal (article 44(1) of Law 5016/2023, article 895 GCCP).

In any case, international commercial arbitration awards may be set aside for procedural reasons by virtue of a relevant action filed before the competent court of appeals. Pursuant to article 43 of Law 5016/2023, an award will be set aside if the applicant claims and proves that:

- a party to the agreement was, under the law applicable to it, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or the arbitral tribunal held that it lacked jurisdiction despite the existence of a valid arbitration agreement;
- the applicant was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the arbitral award concerns a dispute that does not fall within the arbitration agreement or transcends the arbitration agreement or the claims submitted to arbitration;
- the composition of the arbitral tribunal or the arbitral proceedings were not in compliance with the arbitration agreement or, absent such agreement, with Law 5016/2023; or
- grounds 6 and 10 of article 544 GCCP for the filing of a trial de novo are met.

With respect to domestic arbitration, an award may be set aside partially or in its entirety by virtue of a relevant action filed before the competent court of appeals for the following reasons:

- the arbitration agreement is void;
- at the time of issuance of the award, the arbitration agreement was not in force;
- the choice of arbitrators was not in compliance with the terms of the agreement or the provisions of the law or the arbitrators were revoked by the parties or exempted;
- the arbitrators acted transcending their powers pursuant to the arbitration agreement or the law;
- the parties' equality during the proceedings, or the provisions of law with respect to the manner the arbitrators decided or the formal requirements of the arbitral award were not respected;
- the award contravenes public policy or the accepted principles of morality;
- the award is incomprehensible or contains controversial provisions; or
- one of the grounds for the filing of trial de novo under Greek law is met (article 897 GCCP).

In addition, the GCCP allows the parties to challenge an award, requesting the declaration of its non-existence by the competent court of appeals, if:

- there was not an arbitration agreement at all;
- the subject matter of the dispute was not arbitrable; or
- the award was issued in arbitration involving a non-existing individual or legal entity (article 901 GCCP).

he judgment of the court of appeals setting aside or declaring the non-existence of an arbitral award is further subject to appeal in cassation.

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- the applicant was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
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the arbitral award concerns a dispute that does not fall within the arbitration agreement or transcends the arbitration agreement or the claims submitted to arbitration;

- the composition of the arbitral tribunal or the arbitral proceedings were not in compliance with the arbitration agreement or, absent such agreement, with Law 5016/2023; or
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- at the time of issuance of the award, the arbitration agreement was not in force;
- the choice of arbitrators was not in compliance with the terms of the agreement or the provisions of the law or the arbitrators were revoked by the parties or exempted;
- the arbitrators acted transcending their powers pursuant to the arbitration agreement or the law;
- the parties' equality during the proceedings, or the provisions of law with respect to the manner the arbitrators decided or the formal requirements of the arbitral award were not respected;
- the award contravenes public policy or the accepted principles of morality;
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he judgment of the court of appeals setting aside or declaring the non-existence of an arbitral award is further subject to appeal in cassation.

Law stated - 22 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The party that intends to enforce a foreign arbitral award in Greece should file an application for its recognition and enforcement before the single-member court of first instance of the

residence of the debtor, to be heard in ex parte proceedings. The court has the power to summon any third party that has a legitimate interest to intervene to the trial, rendering such party a litigant of the proceedings. In addition, Greece is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and has transposed the latter to its national legislation by virtue of the Legislative Decree 4220/1962. Therefore, the grounds on which recognition and enforcement of a foreign arbitral award may be refused (if invoked by a party or ex officio, where applicable) are those prescribed in article V of the New York Convention (article 45 of Law 5016/2023).

In contrast, for the enforcement of a domestic arbitral award, its filing to the secretariat of the single-member court of first instance suffices.

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In contrast, for the enforcement of a domestic arbitral award, its filing to the secretariat of the single-member court of first instance suffices.

Law stated - 22 May 2025

Costs

35 | Can a successful party recover its costs?

The reimbursement of the parties' costs may be subject to the arbitration agreement. In the absence of a relevant provision in the arbitration agreement, the arbitral tribunal, taking into account the circumstances of the case, the arbitral proceedings and in particular the outcome of the arbitration, shall decide on the allocation of the costs of the arbitration to the parties (article 41(4) of Law 5016/2023). There is no statutory restriction as to what the costs of arbitration may include, but it is provided that the costs recoverable by the parties for their representation and assistance in the arbitral proceedings must be reasonable.

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Law stated - 22 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative dispute resolution mechanisms have not been commonly used in Greece. Mediation, as well as judicial mediation, was introduced in the Greek legal order in 2010 by virtue of Law 3898/2010, which transposed into Greek law Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters and provided for optional recourse to mediation.

In 2012, the institution of judicial mediation was amended via article 214B GCCP, allowing the parties, at their initiative or following a request by the court, to refer a dispute to judicial mediation at any stage of the proceedings. Effectively, the judge of the court before which the case is pending will act as a mediator and will have separate and joint meetings with each party and their legal representatives and make non-binding suggestions thereto regarding the resolution of the dispute. If the parties reach an agreement, minutes of judicial mediation will be drafted, signed and lodged at the secretariat of the first instance court, so as to become enforceable. The judicial mediation scheme is still in force, although, in practice, it has rarely been applied.

In 2018, Law 4512/2018, containing Regulations Relevant to Mediation, was adopted for the purpose of further harmonising Greek legislation to the provisions of the same directive and making recourse to mediation mandatory for specific types of disputes. However, the Supreme Court held via its Legal Opinion No. 34/2018 that the provision of Law 4512/2018 on mandatory recourse to mediation was unconstitutional, as it violated the right to judicial protection (articles 6, 20 of the Greek Constitution, article 13 of the European Convention of Human Rights and article 47 of the Charter of Fundamental Rights of the European Union). Therefore, the effect of the said provision was suspended twice: first until 16 September 2019, and then until 30 November 2019. On the latter date, Law 4640/2019 introduced a new mandatory mediation scheme and abolished the aforementioned provision, which was never applied.

Law stated - 22 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

By virtue of Law 4640/2019, the prior recourse to mediation proceedings is rendered mandatory for the following certain types of disputes, which include:

- disputes in respect of which the parties have validly agreed in writing a mediation clause;

- family disputes, except for those concerning: divorce, cancellation of marriage, recognition of existence or non-existence of marriage, and the relationship between parents and children; and
- disputes resolved under the ordinary procedure, in the following cases: if the object of the dispute exceeds €30,000, if the dispute falls within the competence of the single-member first instance civil court, and, in every case, if the dispute falls within the competence of the multi-member first instance civil court.

The mediation scheme involves the following.

First, the mediator is appointed upon mutual agreement of the parties or by decision of a third party appointed by the parties. The mediation procedure commences upon submission of a relevant request to the appointed mediator by one of the parties.

Subsequently, the mediator determines the date and place of the mandatory initial mediation session, during which the parties are present, each accompanied by a lawyer. The initial mediation session must take place within 20 days of the day following the receipt of the request for recourse to mediation. The parties are free to withdraw at any time from the mediation session, without any justification or sanction. Upon conclusion of the mandatory initial session, the mediator drafts the relevant minutes, which are signed by all participants.

Upon the completion of the initial mediation session, the parties may agree to continue with the mediation procedure, which will have to be completed within 40 days. If an enforceable agreement is concluded in the context of the mediation procedure, the mediator will draft the relevant mediation minutes, which will be signed by the mediator and the parties.

In the alternative, the mandatory initial mediation session minutes must be filed along with the parties' pleadings before the competent court for the pending lawsuit to be admissibly heard.

Pursuant to article 44 of Law 4640/2019 and article 74(14) of Law 4690/2020, this mandatory mediation scheme came into force:

- on 30 November 2019 for disputes in respect of which the parties have validly agreed in writing a mediation clause;
- on 15 January 2020, for family disputes, except for those concerning:
 - divorce;
 - annulment of marriage;
 - recognition of existence or non-existence of marriage; and
 - and the relationship between parents and children; and
- on 1 July 2020 for disputes resolved under the ordinary procedure, in the following cases:
 - if the object of the dispute exceeds €30,000, if the dispute falls within the competence of the single-member first instance civil court; and
 - if the dispute falls within the competence of the multi-member first instance civil court.

Law stated - 22 May 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In relation to arbitration, it is noticeable that criminal cases cannot be referred to arbitration under Greek law. With regard to tax disputes, although in principle they are not arbitrable, they can be referred to arbitration where the state has control over the subject of the dispute. Labour disputes are also explicitly exempt from arbitration, except for collective bargaining disputes (article 16 of Law 1876/1990 as amended through Law 4635/2019).

In relation to mediation, the mandatory mediation scheme does not apply indicatively to the following disputes:

- disputes falling within the competence of the single-member first instance civil court with a monetary value under €30,000;
- disputes of the voluntary (non-contentious) procedure;
- interim measures proceedings;
- special proceedings, namely property disputes, payment order and order for the return of leased property (articles 614 to 645 of GCCP) and specific family disputes (592 of GCCP), that is, concerning:
 - divorce;
 - annulment of marriage;
 - recognition of existence or non-existence of marriage; and
 - the relationship between parents and children;
- appeal or opposition proceedings;
- enforcement proceedings; and
- disputes in which the Greek state, a municipal or regional authority, or a legal entity of public law is a litigant.

Another interesting element about the mandatory mediation scheme regards the suspension of the statute of limitations. As soon as the mediator has been appointed, he or she will send a written notification to the litigant parties regarding the time and place of the mandatory initial session. That written notification will suspend the limitation period for the exercise of relevant claims or rights, as well as the judicial deadlines for filing of pleadings, addendum-rebuttal or intervention. Any agreement of the parties regarding voluntary recourse to mediation will have the same effect. In the case of failure to reach an agreement in the context of the mediation, or termination of the mediation procedure in any other manner, the limitation period shall no longer be suspended and will continue to run from the day following the above events.

As far as mediation costs are concerned, each party must pay, apart from the payment of its attorney, a note of prepayment of fees amounting to €100 for cases falling within the competence of the single-member first instance court, and €150 for cases ruled by the multi-member first instance court. In principle, the mediator's payment is freely determined by agreement of the parties. If no agreement has been concluded, the mediator's payment amounts to €50 for the mandatory initial session and €80 for every additional mediation hour. If a party does not attend the initial mandatory session, despite being summoned, the competent court before which the dispute is brought may impose on this party a fine ranging from €100 to €500. No judicial duty is payable.

Finally, the signed mediation minutes constitute an executory title, in accordance with article 904, paragraph 2 GCCP, as of the date of submission to the competent court. Those minutes can also be used as a title for registration or lifting of a mortgage. After the submission of the signed mediation minutes to the court, no civil action can be filed for the dispute in question and any pending trial is cancelled.

Law stated - 22 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The last series of legislative amendments, via Law 4842/2021 (Government Gazette Vol A/190/13.10.2021), effective as of 1 January 2022, as such law has been amended and is in force at the time of writing, has brought some changes to the Greek e-justice system. Though electronic trials and the remote examination of witnesses are still not possible in Greek civil litigation, a series of legislative efforts over the past years have somewhat facilitated and encouraged the use of technology for the completion of certain procedural acts, for example:

- the service of court documents by court bailiffs through electronic means;
- the exchange of electronic communication between the court secretariat and a litigant for the purposes of the litigant remedying a typical omission;
- the posting of the docket by the court electronically;
- the filing of court documents by parties electronically;
- the issuance of certificates electronically; and
- the release to the parties' attorneys of court decisions and transcripts electronically.

There has also been a change in the procedural rules applicable to disputes with a value under €5,000; such claims must be served to the counterparty through court bailiffs within 10 days, or if the defendant resides abroad or is of unknown address, within 30 days, of their filing at the latest. Any supporting documentation and evidence by both parties, as well as written pleadings by the defendant, must be filed within 20 days as of the above

deadline of the claim's service to the defendant, while additional pleadings and rebuttals can be filed within five days of the filing of the pleadings.

In the field of case law, there has been an interesting development concerning the judicial duty that is often payable by the plaintiff.

The judicial duty is payable to the Greek state and certain state institutions and corresponds to 8 per mille, plus surcharges, on the total amount claimed by the plaintiff. By virtue of Law 4640/2019, the obligation to pay the judicial duty was extended to actions in the ordinary procedure requesting the mere recognition of a claim (by virtue of a declaratory judgment), except for the actions with a claimed amount under €250,000. The obligation to pay judicial duty also applied to actions in the ordinary procedure that had already been filed but had not been heard yet at the time of entry into force of the relevant provision.

A recent court judgment (68/2021 of the Athens Multi-Member First Instance Court) ruled that the extension of the obligation of judicial duty payment to actions already filed before the entry into force of Law 4640/2019 is not in conformity with the Greek Constitution. According to the court, the grounds for the unconstitutionality are that the statutory provision in question does not comply with the principle of legal certainty, which derives directly from the Constitution; a particular aspect of this principle, which was held to have been infringed in this case, is the principle of protection of the individual's confidence in the state and its institutions.

This judgment has not been the only one to date to find constitutionality issues with the statutory provision in question; nor is it likely to be the last. Although the statute has not yet been amended by the legislature, it is highly likely that if the Greek courts, especially the higher courts (the appeal courts and Supreme Court), continue ruling in this direction, the legislative body is likely to decide to modify Law 4640/2019 accordingly and limit the obligation to pay judicial duty to actions filed after the entry into force of the said law.

Law stated - 22 May 2025

BERNITSAS

Christos Paraskevopoulos

cparaskevopoulos@bernitsaslaw.com

Bernitsas Law

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Hong Kong civil court system comprises the following major courts and tribunals:

- **Small Claims Tribunal:** to hear and decide low-value monetary claims involving HK\$75,000 or less. The main types of claims handled by the Tribunal are debt, service charges, damage to property, goods sold and consumer claims. Hearings are conducted informally, and no legal representation is allowed.
- **Labour Tribunal:** to hear and decide employment-related disputes. Hearings are conducted informally, and no legal representation is allowed.
- **Lands Tribunal:** to hear and decide cases relating to possession of premises, building management, land and tenancy disputes.
- **Competition Tribunal:** to hear and decide cases relating to competition law. The Tribunal has all the same powers, rights and privileges as the Court of First Instance.
- **Market Misconduct Tribunal:** to hear and decide cases relating to market misconduct matters including insider dealing, false trading, price rigging, stock market manipulation, disclosure of information about prohibited transactions and disclosure of false or misleading information inducing transactions in securities and futures contracts.
- **District Court:** to hear and decide monetary claims for an amount over HK\$75,000 but do not exceed HK\$3 million. The Family Court in the District Court handles matrimonial cases, for example, divorce, maintenance, custody and adoption of children. There are currently 41 judges in the District Court.
- **Court of First Instance:** unlimited civil jurisdiction and hears appeals from various tribunals, such as the Labour Tribunal and the Small Claims Tribunal. There are currently 26 judges in the Court of First Instance.
- **Court of Appeal:** jurisdiction to hear appeals from the Court of First Instance, the District Court and various tribunals and statutory bodies, such as the Lands Tribunals and the Competition Tribunal. There is currently one chief judge and 13 justices of appeal.
- **The Court of Final Appeal:** the highest appellate court with jurisdiction to hear appeals from the Court of Appeal and the Court of First Instance. There is one chief justice, three permanent judges and 16 non-permanent judges. The court when sitting will comprise five judges, which usually comprise the chief justice, three permanent judges and one non-permanent judge from another common law jurisdiction.

Certain types of cases are classified according to specialist court lists to aid proper and efficient case management; for example, the Commercial List, the Construction and Arbitration List, the Personal Injuries List, the Intellectual Property List and the Admiralty List.

Law stated - 6 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Judges

Hong Kong courts adopt the common law adversarial system. Parties to litigation present their evidence and arguments to the judge, who will then assess the strengths of the arguments and evidence presented by each side, decide whether the evidential factual and legal standards have been met and, ultimately, determine the dispute.

Judges are appointed by the Chief Executive (head of the Hong Kong government) on the recommendation of the Judicial Officers Recommendation Commission. The Commission is an independent statutory body composed of judges, persons from the legal profession and eminent persons from other sectors.

To retain experienced senior judges and attract qualified private practitioners to join the judiciary, some changes were made to the retirement age on 6 December 2019:

- the normal retirement age for judges of the Court of Final Appeal as well as the Court of Appeal and the Court of First Instance was extended from 65 to 70;
- the normal retirement age for members of the Lands Tribunal, magistrates and other judicial officers at the magistrate level was extended from 60 to 65; and
- the normal retirement age for judges of the District Court was maintained at 65.

Jury

Trial by jury in civil cases is very rare. A party may apply to the court for a trial by jury if there is at issue a claim in respect of libel, slander, malicious prosecution, false imprisonment or seduction, or as prescribed under [the Rules of the High Court](#) (Chapter 4A). However, there will be no trial by jury where the court considers that the trial requires any prolonged examination of documents or any scientific or local investigation that cannot conveniently be made with a jury.

Law stated - 6 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Subject to certain exceptions (see below), the broad time limits for bringing various civil claims are:

- contractual claims: six years from the date of breach of contract;

- tortious claims: six years from the date when damage was suffered;
- personal injuries claims: three years from the date of the accident or the date of knowledge (whichever is later) for common law negligence claim, or two years from the date of the accident for claim under the Employees' Compensation Ordinance (Chapter 282);
- recovery of land: 12 years from the date when the right accrued or 60 years if the claim is brought by the government;
- deeds: 12 years from the date of breach;
- cargo claims: one year from the date of damage or loss if subject to Hague-Visby Rules; otherwise, the six-year time limit for contract and tort claims applies; and
- salvage claims: two years from the date on which the salvage operations are terminated; and
- collision of vessels claims: two years from the date of damage, loss or injury.

[The Limitation Ordinance](#) (Chapter 347) does not prohibit parties from varying the statutory time limits. It also provides that the time limits can be extended under certain exceptional circumstances, for example:

- where the plaintiff was under a disability, the time limit begins to run from the date the plaintiff ceases to be under a disability or dies (whichever is earlier); and
- where the action is based upon the defendant's fraud, a relevant fact has been deliberately concealed by the defendant or the action is for relief from consequences of mistake, the time limit begins to run when the plaintiff discovered the fraud, concealment or mistake or could with reasonable diligence have discovered it.

Law stated - 6 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Before commencing proceedings, it is good practice for a plaintiff to send a pre-action demand letter to the defendant setting out the factual and legal basis of the claim and the relief or remedies being claimed against the defendant.

For personal injuries claims, it is mandatory for a plaintiff to issue a pre-action demand letter to the defendant (and copied to the defendant's insurer, if known) four months before commencing proceedings.

The parties should also make every reasonable effort to settle their dispute through 'without prejudice' settlement negotiations or mediation (which is now compulsory under the court rules unless a party has cogent reasons for not wishing to mediate the dispute). The court may make an adverse costs order against any party that fails to engage in mediation without good reasons.

The court can also, upon application, order pre-action discovery of 'relevant' and 'necessary' documents to enable the plaintiff to formulate the case properly.

Law stated - 6 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings are usually commenced in the Court of First Instance and the District Court (depending on the quantum of claim) by issuing a writ of summons. Certain types of proceedings can also be commenced by originating summons, originating motion and petition. Generally, there are three methods to serve the writ on a local defendant, namely, by personal service, by registered mail or by 'insertion through letter box'. If the defendant is a limited company, the plaintiff can serve the writ by posting it to, or leaving it at, its registered office. If the defendant is located overseas, the plaintiff is required to obtain the court's permission to serve proceedings on a defendant not in Hong Kong.

The judiciary's [figures](#) show that the Court of First Instance alone received 17,014 in 2023 and 20,001 in 2024. The average waiting time (Civil Fixture List), from application to fix date to hearing, which initially decreased from 178 days in 2022 to 158 days in 2023, has increased back to 172 days in 2024.

Plaintiffs or claimants will have to pay a prescribed filing fee at the court when commencing proceedings in Hong Kong (ranging from HK\$20 to HK\$1,045 depending on the court or tribunal where the action is being commenced).

Law stated - 6 May 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

Civil proceedings are typically commenced by a writ of summons being issued by the plaintiff together with a statement of claim (which the plaintiff can also elect to serve at a later date). After the writ has been issued, it must be served on the defendant within 12 months unless the court has agreed to extend the validity of the writ beyond 12 months. The subsequent steps and deadlines are as follows:

	Action	Deadline
(a)	Defendant to acknowledge service of the writ	Within 14 days from the service of the writ (including the day of service)
(b)		

	Defendant to file and serve a defence (and counterclaim, if any)	Within 28 days from (1)
(c)	Plaintiff to file and serve a reply (and defence to counterclaim, if any)	Within 28 days from (2)
(d)	Close of pleadings	Within 14 days from (3)
(e)	Discovery (disclosure of documents related to the case)	Within 14 days from (4)
(f)	Parties to file a timetabling questionnaire	Within 28 days from (4)

Thereafter, the parties are required to exchange factual witness statements and expert reports (if necessary). The parties may then apply to set the case down for trial. The time frame for a civil claim from the date of commencement of the action to a trial can be approximately 24 months and potentially longer, depending on the complexity of the case, the number of days to be reserved for the trial and the availability of judges (which depends on the volume of cases in the court diary).

Law stated - 6 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Generally speaking, the Hong Kong Court will consider the following factors when considering whether it has jurisdiction over a case:

- whether a defendant is deemed to have submitted voluntarily to Hong Kong jurisdiction (eg, by agreement to an exclusive jurisdiction clause);
- the means by which a defendant may effectively be served with originating process in Hong Kong;
- the rules and principles under which the Hong Kong Court has jurisdiction to grant leave to a plaintiff to serve process outside Hong Kong; and
- whether it is in any event appropriate for the Hong Kong Court to exercise jurisdiction over a matter, in other words whether Hong Kong is *forum conveniens*.

A defendant who wishes to dispute the jurisdiction of the Hong Kong Court in the proceedings may, after giving notice of intention to defend the proceedings and within the time limit for service of a defence, apply to the Court for appropriate relief. This may include,

amongst other things: (1) a declaration that in the circumstances of the case the Hong Kong Court either has no jurisdiction over the defendant in respect of the dispute or should not exercise any jurisdiction it may have; (2) an order dismissing or staying the proceedings, and/or (3) such other relief as the Court may deem appropriate.

For an application to dispute jurisdiction on the basis of *forum non conveniens* (ie, that Hong Kong is not the natural and appropriate forum to determine the dispute), the Court has to answer a single question, namely whether there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial, that is in which the action may be tried more suitably for the interests of all the parties and the ends of justice. In practice, the Hong Kong Court will adopt a 3-stage test:

- (Stage 1) The defendant must establish that first, Hong Kong is not the natural or appropriate forum. 'Appropriate' in this context means the forum that has the most 'real and substantial' connection with the action. And second, there is another available forum 'clearly or distinctly' more appropriate than Hong Kong. Failure to establish these two matters at this stage is fatal.
- (Stage 2) If the defendant establishes both matters in Stage 1, then the plaintiff may show that if the action is tried in a forum other than Hong Kong the plaintiff will be deprived of a legitimate personal or juridical advantage of Hong Kong.
- (Stage 3) If the plaintiff can establish the test in Stage 2, the court balances the advantages of trial in the alternative forum with the disadvantage(s) the plaintiff will suffer. Deprivation of such advantage(s) will not necessarily be fatal to the defendant if the defendant can establish to the court's satisfaction that 'substantial justice will be done' in the available appropriate forum.

An anti-suit injunction may also be sought either by way of originating process or by way of application in the course of existing proceedings in Hong Kong to restrain a person from commencing or continuing proceedings in a foreign or inappropriate forum with the aim of protecting a right to proceed in Hong Kong or by an agreed process (eg, arbitration). There are three usual situations:

- where a Plaintiff commences proceedings in two jurisdictions simultaneously;
- where the Defendant in one set of proceedings is the Plaintiff in another set of proceedings commenced in another forum arising out of the same controversy; or and
- a Defendant is sued in what it considers to be an inappropriate forum and seeks an injunction to shut down such action without taking its own proceedings anywhere else, at least not at the time.

The practical utility of such an injunction is twofold:

- a breach of the anti-suit injunction is a contempt of court subject to the Court's sanction.
- a foreign judgment obtained in breach of a Hong Kong anti-suit injunction will not be recognised or enforced in Hong Kong.

On the basis of recent common law authorities, it is suggested that it is proper for the Hong Kong Court to grant an anti-suit injunction in the following two situations:

- Where there is an exclusive Hong Kong jurisdiction clause
- There has been unconscionable conduct on the part of the party to be restrained, of which the applicant is entitled to complain, and has a legitimate interest in seeking to prevent

Nevertheless, the court is unlikely to exercise its jurisdiction to grant an anti-suit injunction to restrain proceedings in jurisdiction A where the chosen or natural forum for the dispute is jurisdiction B rather than Hong Kong, even over a Hong Kong defendant. The court would usually lack a sufficient interest in the matter in that it would not be protecting its own jurisdiction (or arbitral processes within the jurisdiction) and/ or may thereby in effect side with the courts of jurisdiction A over those of B.

Law stated - 6 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The court rules give the parties an element of control over the case procedure and timetable. The courts are also vested with active case management powers to increase cost effectiveness and ensure that cases are dealt with as expeditiously as is reasonably practicable.

After the close of pleadings, the parties are required to exchange and file with the court a timetabling questionnaire setting out their proposed case management directions and timetable. Afterwards, if the parties are able to reach an agreement on the case management directions and timetable, they should seek the approval of the court. Otherwise, the plaintiff is required to take out a case management summons for a case management hearing. At the case management hearing, the court will give case management directions and set a timetable for the parties to comply with those directions.

The case management directions typically specify the timetable for the parties to complete discovery, exchange witness statements and expert evidence (if any), and complete a case management conference, a pretrial review (PTR) and the trial. Parties may by consent or upon application to the court vary the non-milestone events (eg, discovery, exchange of witness statements and expert evidence). Milestone dates (eg, case management conference, PTR and trial) may only be postponed by the court under exceptional circumstances.

A PTR usually takes place around eight weeks before the trial to ensure the case is ready to proceed to trial on the allocated dates. At the PTR, the court will typically give directions and deadlines for the plaintiff to file and serve the trial bundles and the parties to file their respective opening submissions.

Parties may apply to court for time extensions. The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by the court rules, or by any judgment, order or directions, to do any act in any proceedings.

Law stated - 6 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

The process of preserving and disclosing relevant documents and evidence pending trial is called 'discovery'. It is a continuing process that begins when litigation is contemplated and continues until the end of the trial. The scope of discovery covers all documents that are relevant to the issues in the action and, therefore, includes documents that both support and are detrimental to a party's case.

There are three main stages of discovery:

- Automatic discovery: after the close of pleadings, each party is required to disclose, by way of a 'list of documents', all documents that he or she has or has had in his or her possession, custody or power relating to matters in question between the parties in the action. If a party fails to make automatic discovery, the court may, upon application, make an order for general discovery.
- Specific discovery: the court may, upon the application of a party, order the other party to disclose specific documents that are in the possession, custody or power of the other party; relate to the issues in the action and are necessary to dispose fairly of the cause or matter; or for saving costs.
- Inspection: a party serving a list of documents is obliged to produce the documents referred to in the list for inspection by the other party, except where the documents are privileged.

Interrogatories are another form of discovery, whereby a party may serve written questions on another party for the purpose of obtaining admissions or evidence of material facts within his or her knowledge and relevant to the dispute. Answers to interrogatories are normally given on affidavit and the other party may rely on the answers as evidence at trial.

Law stated - 6 May 2025

Evidence – privilege

- 10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Documents that are 'privileged' are protected from disclosure in litigation. The parties only need to disclose their existence (but not the contents) during discovery. The main bases for claiming privilege are:

- Legal professional privilege: includes litigation privilege and legal advice privilege. Litigation privilege protects confidential communications made between either the client or his or her legal adviser and a third party (eg, factual or expert witness), where those communications have come into existence for the dominant purpose of being used in connection with actual, pending or contemplated litigation. Legal advice privilege protects confidential communications between a client and his or

her legal adviser for seeking or giving legal advice. Where an in-house lawyer provides advice to his or her employer in the capacity of legal adviser, that advice is protected by legal professional privilege.

- Without prejudice communications: communications relating to good-faith settlement negotiations are privileged and protected from disclosure.
- Privilege against self or spousal incrimination: no person is compelled to disclose documents if doing so will expose that person or his or her spouse to proceedings for a criminal offence or for recovery of penalty.
- Public interest immunity: disclosure of documents may be withheld if to do so would be prejudicial to public interest.

Law stated - 6 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

The parties exchange factual witness statements before trial in accordance with the court's case management directions. Normally the court directs that the witness statements served by the parties shall stand as the evidence-in-chief of the witnesses at trial. Under special circumstances and with the permission of the court, evidence may also be given by affidavit or deposition.

Expert evidence may be allowed upon the agreement of the parties or with the court's permission. If a party seeks to adduce expert evidence, the court gives expert directions requiring the expert witnesses to exchange and submit to the court written expert reports, attend a joint experts meeting and submit a joint expert report to the court. The court may also direct the parties to appoint a single joint expert where appropriate.

Law stated - 6 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Generally, witnesses (factual and expert) are examined orally at trial in open court. The party serving the witness statements decides whether to call the witness to attend the trial. If a witness is not called to give evidence at the trial, no other party may rely on the witness statement of that witness as evidence at the trial. A witness who is called is first examined-in-chief by the party who calls him or her. The other party or parties may then cross-examine him or her. Afterwards, the witness may be re-examined by the party who calls him or her. The scope for re-examining a witness is limited to only those matters raised during cross-examination. It is not another opportunity to go through the evidence provided by the witness.

In special circumstances, and with the court's permission, a witness may be permitted to give evidence and be cross-examined by video link. The court recognised in one case – *Au Yeung Pui Chun v Cheng Wing Sang* [2020] HKCFI 2101 – that there are grounds, in view of the covid-19 pandemic, 'for real concern for a person who is being asked to travel a very long distance including taking a flight to attend trial in an unfamiliar place at this time in the midst of the coronavirus outbreak'.

In addition to [Practice Direction 29 'Use of The Technology Court'](#), the judiciary has also published a number of [Guidance Notes](#) regarding the use of remote hearings for civil business in civil courts in 2020. In 2021, remote hearing arrangements via video-conferencing facilities or telephone were extended to civil cases in the Labour Tribunal and the Small Claims Tribunal. Further, the Courts (Remote Hearing) Ordinance took effect in March 2025.

Law stated - 6 May 2025

Interim remedies

13 | What interim remedies are available?

Available interim remedies are as follows:

- Injunctions: court orders requiring a party to do something or refrain from doing something, such as:
 - *Mareva* injunctions (which is now the same as a freezing injunction) to prevent a party from disposing of its assets or removing those assets from Hong Kong. The court can also grant a worldwide *Mareva* injunction that covers assets both in and outside Hong Kong;
 - *Anton Piller* orders permitting the applicant to enter the respondent's premises and inspect or preserve specified property; and
 - *quia timet* ('because he fears') injunctions to prevent an anticipated infringement of the applicant's legal rights.
- Interim payment: where a plaintiff can show that if the case proceeds to trial, he or she will recover a substantial award of damages from the defendant, the court may order the defendant to make an interim payment into court on account of any damages, debt or other sums that he or she may be held liable to pay to the plaintiff.
- Appointment of receivers: where it appears to the court to be just and convenient to do so, it may appoint a receiver to receive, manage or protect property pending the trial.
- Appointment of provisional liquidators: to safeguard the assets of a company prior to the hearing of a winding-up petition.

The Court of First Instance may also grant free-standing interim relief in relation to proceedings that have been or are about to be commenced outside of Hong Kong and that are capable of giving rise to a judgment that may be enforced in Hong Kong.

Law stated - 6 May 2025

Remedies

14 | What substantive remedies are available?

Common substantive remedies include:

- damages: monetary compensation for the innocent party. Damages may also be awarded for prospective losses, inconvenience and injured feelings or as punishment in the form of punitive and exemplary damages;
- specific performance: requiring a party to perform the contractual obligations he or she undertook to discharge;
- restitution: restoring the innocent party to the position they were in before the injury occurred;
- rescission: setting aside a contract and putting the parties back into the position that they were in before entering into the contract;
- quantum meruit: reasonable remuneration for the value of work done or goods supplied;
- injunctions: requiring a party to do or cease to do something;
- declarations: where the court declares the legal position of the parties;
- account of profits: recovery of profits attributable to a breach of a fiduciary relationship; and
- interest: simple interest is usually awarded on the judgment debt from the date of the judgment until its satisfaction at a rate as the court thinks fit (the court may award compound interest in certain cases, such as claims in equity).

Law stated - 6 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

It is one of the underlying objectives of the rules of the Hong Kong courts to facilitate the settlement of disputes, and the courts have the duty as part of active case management to further that objective by encouraging the parties to use an alternative dispute resolution procedure (such as mediation) if the courts consider that appropriate and facilitating its use. The courts also have the duty of helping the parties to settle their case and the parties and their legal representatives have the duty of assisting the courts to discharge that duty. The relevant procedures are set out in [Practice Direction 31](#). In particular, parties are encouraged to engage in mediation to the minimum level of participation agreed to by the

parties or as directed by the court. The court may make adverse costs order against a party who has unreasonably failed to engage in mediation.

Generally speaking, including dealing with matters arising under Practice Direction 31 and in exercising its discretion on costs (except where parties have reserved the rights to refer to relevant correspondence on the question of costs, that is without prejudice save as to costs correspondence), the court cannot compel the disclosure of or admit materials so long as they are protected by privilege in accordance with legal principles, including legal professional privilege and the privilege protecting without prejudice communications concerning good faith settlement discussions. What happens during the mediation process, being without prejudice communications, is also protected by privilege. There are certain limited exceptions to this rule, such as where the issue in dispute is whether the without prejudice communications have resulted in a concluded compromise agreement, or where the without prejudice communications show that a settlement agreement should be set aside on the ground of misrepresentation, fraud or undue influence.

As part of its initiative to facilitate settlement of disputes, the District Court undertook a pilot scheme in 2018 to introduce the idea of assisted settlement into its case management process to further promote the use of alternative dispute resolution civil litigation and to instil among litigants as well as their legal representatives a culture of exploring settlement. The pilot scheme was extended for 24 months from January 2021 and upgraded into a more structured format (Case Settlement Conference (CSC)), and was further extended for another 24 months from January 2023 with the introduction of a scheme of Mediator-Assisted Case Settlement Conference (MCSC) and a mechanism of party-drive CSC/MCSC. The guidance note can be found [here](#).

Law stated - 6 May 2025

Enforcement

16 | What means of enforcement are available?

Even if a plaintiff successfully obtains judgment against a defendant, it does not necessarily follow that the judgment debt will be paid. There are various ways for the plaintiff (the judgment creditor) to enforce a judgment against the defendant (the judgment debtor):

- writs of execution, whereby the court bailiffs can seize property belonging to the judgment debtor;
- garnishee proceedings, whereby debts owed may be enforced by seizure and attachment to debts owed to the judgment debtor;
- charging orders on property, whereby the judgment creditor becomes a secured creditor;
- stop notices or stop orders that prevent dealing in securities in a manner contrary to the interest of the judgment creditor;
- prohibition order to restrain the judgment debtor from leaving Hong Kong (often an effective tool to procure payment of a judgment debt if the individual needs to travel outside Hong Kong);

- committal proceedings to hold the judgment debtor in contempt of court, which can result in a fine or ultimately imprisonment;
- oral examination of the judgment debtor as to his or her assets available to satisfy the judgment; and
- bankruptcy or winding-up proceedings against the judgment debtor.

Law stated - 6 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

The legal system in Hong Kong is based on the principle of open justice, which promotes openness and transparency such that justice should not only be done but be seen to be done. As such, hearings are generally heard in open court. In exceptional cases, hearings are held in closed courts, such as where the subject matter of the proceedings would otherwise be destroyed or for moral, public policy or national security reasons, or where parties' private lives so require.

The only court documents available to the public are the writs filed to commence civil proceedings and court judgments. The substantive case documents (such as pleadings, witness statements, expert reports and court orders) are not available to the public.

A party who obtains discovery may only use the documents disclosed to him or her for the purpose of conducting his or her own case, and there is an implied undertaking by him not to use them for any collateral or ulterior purpose. The court will not release or modify the implied undertaking save in special circumstances and where the release or modification will not result in injustice to the person giving discovery. Further, the court has inherent jurisdiction to take precautions against the possibility that discovery may be abused or cause unjustified hardship, and may impose appropriate restrictions upon inspection and permit it subject to undertakings.

Parties to the proceedings are also free to agree to a 'confidentiality club' to reduce the risk of confidential documents being used outside of the proceedings by only allowing specified persons to access the relevant documents, although in practice it may be difficult to agree to the exact terms of such agreement. The court also has jurisdiction to impose confidentiality clubs in appropriate cases, although these are the exception rather than the rule.

However, any implied undertaking does not apply to documents referred to in a party's pleadings, affidavits, witness statements or expert reports, and subject to the court's directions, any undertaking not to use a document for any purpose other than those of the proceedings in which it disclosed shall cease to apply after it has been read to or by the court, or being referred to in open court.

Law stated - 6 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The courts have broad discretion to make costs orders. The general rule is that ‘costs follow the event’; that is, the unsuccessful party pays the successful party’s costs.

Other cost orders include ‘no order as to costs’ (where the parties are responsible for their own respective costs), and other more ‘bespoke’ costs orders depending on the circumstances (eg, the successful party is ordered to pay part of the unsuccessful party’s costs where the plaintiff has not succeeded on all of his or her claims or where there is a finding of procedural misconduct by both sides).

In exercising its discretion, the court will generally take into account various factors, such as the parties’ conduct during the proceedings, including whether a party had failed to accept a written settlement offer and eventually does not ‘beat’ the settlement offer in the judgment.

The court is also mandated to exercise its case management powers to encourage and facilitate the use of alternative dispute resolution (ADR) procedures. Notwithstanding that the court can only encourage, but not compel, the parties to use ADR procedures, the court can take into account the refusal of any party to undertake mediation or another ADR procedure (without a reasonable explanation) when awarding costs (eg, to deprive a party of an entitlement to costs).

If the parties are unable to agree on the amount of costs, the receiving party may apply to the court for a taxation of his or her costs (a process for the court to assess the amount of costs payable by the paying party). Effective from 1 December 2018, the Court of First Instance and the District Court substantially increased solicitors’ recoverable hourly rates (by more than 40 per cent), which means that a winning party can recover a much higher sum towards payment of his or her actual legal costs from the losing party. In practice, the winning party can usually expect to recover about 60 per cent to 70 per cent of his or her actual costs. The above costs rules generally apply to all civil claims unless otherwise directed by the courts.

A defendant can apply for an order that the plaintiff provide security for costs at any time before the judgment is final in the following situations (it is preferable to apply early on in the proceedings):

- the plaintiff is ordinarily resident out of Hong Kong;
- the plaintiff is suing for the benefit of a third party and there is reason to believe that he or she will be unable to pay the costs of the defendant if required;
- the plaintiff has changed his or her address during the proceedings to evade the consequences of litigation; and
- the plaintiff is a company (whether incorporated in or outside Hong Kong) and there is reason to believe that it will be unable to pay the defendant’s costs from assets within Hong Kong if the defendant succeeds in its defence.

Parties may also consider making sanctioned offers (made by a plaintiff or a defendant by offering to accept less stringent terms than the pleaded case in settlement of all or part of a claim) or sanctioned payments (made by a defendant by payment into court a sum in settlement of all or part of a claim) to encourage the other party to take positive settlement seriously and to avoid unproductive and expensive prolongation of the litigation. If a party rejects the sanctioned offer or payment and subsequently fails to achieve a better result at trial, even if victorious, certain adverse consequences will follow, such as the rejecting party can be ordered to pay (1) costs on an indemnity basis and (2) interest up to base rate plus 10 per cent on the sum awarded.

Law stated - 6 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency or conditional fee arrangement

In Hong Kong, generally, conditional or contingency fees arrangements by lawyers (solicitors and barristers) are not allowed as they are regarded as champertous and therefore unlawful.

Third-party funding

Third-party funding is also generally not permitted for litigation in Hong Kong as it is regarded as falling within the scope of champerty and maintenance and therefore unlawful.

There are, however, certain accepted categories of cases which are considered to be lawful exceptions to the scope of the champerty and maintenance rule:

- 'common interest' cases, involving third parties with a legitimate common interest in the outcome of the litigation to justify support in the litigation;
- cases involving 'access to justice' considerations (for example, the Supplementary Legal Aid Scheme); and
- other miscellaneous practices accepted as lawful practices, such as the 'insolvency exception' (where a liquidator can enter third-party litigation funding arrangements without the sanction of the court), the sale and assignment by an insolvency appointment holder and the development of the doctrine of subrogation as applied to contracts of insurance.

Law stated - 6 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Although insurance companies often participate in litigation (via the doctrine of subrogation), legal expense insurance schemes or 'after-the-event insurance' are not prevalent in Hong Kong, in particular where lawyers are not allowed to charge on a contingency fee basis. There are certain types of insurance that may cover the parties' legal costs (eg, professional indemnity insurance and management liability insurance).

Law stated - 6 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

There is currently no specific procedure for class actions in Hong Kong. The only type of collective proceedings permitted under the Rules of the High Court is 'representative proceedings', which enable numerous persons who have the 'same interest' in any proceedings to begin or continue the proceedings by or against any one or more of them representing all or as representing all except one or more of them. A judgment or order made in representative proceedings is binding on all the persons so represented but shall not be enforced against any person who is not a party to the proceedings, except with the leave of the court.

Law stated - 6 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties to proceedings may appeal on questions of law or fact, or against the court's exercise of its discretion. Higher courts are generally reluctant to interfere with the lower court's exercise of discretion and finding of facts, especially where they are based on the credibility of the witnesses or the preference of one witness' evidence over another, as the lower court has had the advantage of hearing the live evidence at first hand and the judge is in the best position to form a view on the credibility of the witness, having observed the witness giving evidence.

Parties may appeal judgments or orders made by the District Court or the Court of First Instance to the Court of Appeal. For final judgments or orders made by the Court of First Instance, appeal lies 'as of right' (ie, no leave is required) to the Court of Appeal. Leave is required to appeal against interlocutory decisions made by the Court of First Instance or decisions made by the District Court.

A party may also seek leave from the Court of Appeal or the Court of Final Appeal to appeal to the Court of Final Appeal for judgments handed down by the Court of Appeal (whether final or interlocutory). Leave will be granted if, in the opinion of either court, the question involved in the appeal is one that, because of its general or public importance or otherwise, ought to be submitted to the Court of Final Appeal for decision. The Court of Appeal or the Court of Final Appeal may grant leave subject to conditions as it considers necessary.

Law stated - 6 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment (other than a Chinese judgment) may be recognised and enforced in Hong Kong under two different regimes:

- the statutory regime under the [Foreign Judgments \(Reciprocal Enforcement\) Ordinance](#) (Chapter 319): judgments from certain specified countries under the [Foreign Judgments \(Reciprocal Enforcement\) Order](#) (Chapter 319A) may be registered and enforced in Hong Kong provided that the specified statutory conditions are satisfied – once the court grants leave for the judgment to be registered, the foreign judgment can be enforced in the same manner as a Hong Kong judgment; or
- the common law regime: foreign judgments from non-specified countries may be enforced by commencing a writ action relying on the foreign judgment as evidence of a debt between the parties. To be enforceable at common law, there are a number of requirements, such as:
 - the foreign judgment must be final and conclusive on the merits of the claim;
 - the foreign judgment must be for a debt or definite sum of money;
 - the defendant must have submitted to the jurisdiction of the foreign court; and
 - the foreign judgment was not contrary to Hong Kong rules of public policy or notions of natural justice.

The enforcement of Chinese judgments in Hong Kong is subject to a separate regime under the [Mainland Judgments \(Reciprocal Enforcement\) Ordinance](#) (Chapter 597). This ordinance gives effect to the 'Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR Pursuant to the Choice of Court Agreements between Parties Concerned', which was signed on 14 July 2006 (the 2006 Arrangement).

A judgment creditor under a Chinese judgment that satisfies the specified statutory conditions can apply to the Court of First Instance to register the judgment under the ordinance. The conditions include:

- the judgment relates to a commercial contract and was given after 1 August 2008;
-

the parties to the commercial contract had a written agreement made after 1 August 2008 specifying that the courts in mainland China have exclusive jurisdiction over the dispute;

- the judgment was given by the Supreme People's Court, a higher or intermediate people's court or certain recognised primary people's courts;
- the judgment is enforceable in mainland China;
- the judgment is final and conclusive; and
- the judgment is for a definite sum of money (not being a sum payable in respect of taxes or similar charges or in respect of a fine or other penalty).

On 26 October 2022, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill was passed to give effect to the [Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR](#) signed in 2019 (2019 Arrangement), to establish a more comprehensive mechanism for mutual recognition and enforcement of judgments in a wider range of civil and commercial matters. The Bill came into force on 29 January 2024 in the form of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645) (the "Reciprocal Enforcement Ordinance"), and the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules (Cap. 645A) have also been implemented to complement the Ordinance.

The Reciprocal Enforcement Ordinance has the following significant changes:

- an applicant will need to show the connection between the dispute and the requested place to prove that the original court has jurisdiction over the action (the Jurisdiction Requirement);
- the parties are no longer required to agree on an exclusive jurisdiction clause when signing the contract. A judgment will be enforceable in Hong Kong so long as it meets the Jurisdiction Requirement;
- a judgment of second instance (or a judgment of first instance from which there is no appeal within the statutory time limit) issued by a Primary People's Court in mainland China will be covered by the 2019 Arrangement;
- the 2019 Arrangement adopts an 'excluded matters' approach and covers most civil and commercial cases. Excluded matters mainly include those relating to succession, administration or distribution of estate, corporate insolvency, personal bankruptcy, certain maritime matters and certain matrimonial and family matters; and
- both monetary and non-monetary judgment will be enforceable. In the case of mainland China, any judgment, ruling, conciliatory statement and order of payment are included, but a ruling concerning preservation measures will not be covered by the 2019 Arrangement.

Law stated - 6 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

There are no restrictions on taking evidence from a witness in Hong Kong for use in existing foreign proceedings if the witness is willing to give evidence voluntarily. Otherwise, the foreign court must issue a letter of request to the Court of First Instance requiring the witness to give evidence in Hong Kong for civil proceedings instituted or to be instituted before the foreign court. The Court of First Instance has power, on application, to make provision for obtaining evidence in Hong Kong as far as it considers appropriate for the purpose of giving effect to the request.

On 1 March 2017, the [Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR](#) came into force. This arrangement provides that parties must make any request for the taking of evidence through their respective designated liaison authorities.

Law stated - 6 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Yes, the [Arbitration Ordinance](#) (Chapter 609) (AO) adopts the UNCITRAL Model Law, with supplemental or modified provisions that are specific to Hong Kong.

Law stated - 6 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing to be enforceable in Hong Kong (AO, section 19). That requirement is met if:

- the content of the arbitration agreement is recorded in any form, irrespective of how the agreement was concluded;
- the content of the arbitration agreement is recorded in electronic communication; or
- reference is made in a contract to any document containing an arbitration clause, which makes the arbitration clause part of the contract.

Law stated - 6 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The parties are at liberty to determine the number of arbitrators or authorise a third party to make the decision. Otherwise, the Hong Kong International Arbitration Centre (HKIAC) will determine whether one or three arbitrators should be appointed (AO, section 23).

The parties are free to agree on the procedure for challenging an arbitrator. Otherwise, the AO prescribes the procedure for making that challenge, which includes provisions for the challenging party to submit written reasons to the arbitral tribunal and, if unsuccessful, to further request the court or HKIAC to decide on the challenge.

An arbitrator can only be challenged if there are justifiable doubts about his or her impartiality or independence, or if he or she does not possess the qualifications agreed to by the parties.

Law stated - 6 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Arbitrators can be chosen from an extensive pool of local and foreign professionals in Hong Kong, who are multilingual and possess expertise in different industries (eg, international trade, construction, maritime and intellectual property). Various arbitral institutions and professional associations (eg, HKIAC, the Hong Kong Bar Association and the Law Society of Hong Kong) maintain arbitration committees or lists to assist parties in choosing suitable arbitrators. The parties are free to appoint arbitrators from abroad if necessary.

Law stated - 6 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

Under the AO, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the arbitration. In the absence of agreement, the arbitral tribunal may conduct the arbitration in the manner it considers appropriate and in compliance with the following overriding principles (AO, section 46):

- parties' right to equal treatment and the right to be heard;
- the arbitral tribunal must conduct the arbitration independently, fairly and impartially; and

- the arbitral tribunal must use appropriate procedures to avoid unnecessary delay or expense, to provide a fair means for resolving the dispute.

Law stated - 6 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

National courts may be relevant at all stages of the arbitral proceedings but are principally so at the first and last stages, that is, pre-commencement and post-award. At the pre-commencement stage, Hong Kong courts have power to stay court proceedings already commenced or deny jurisdiction in favour of arbitration. The Hong Kong courts also have overlapping powers to make certain pre-hearing orders that may be made by an arbitrator. These include ordering an amount in dispute to be secured and granting interim injunctions. A court may, however, decline to make such an order if the application would be more appropriately dealt with by the arbitral tribunal. A court may also make an order requiring a person to give evidence before an arbitral tribunal or to produce documents.

The Hong Kong courts are widely recognised to have taken the pro-arbitration approach and generally hold parties to what they have contractually agreed in their arbitration agreements. As such, if a party commences court proceedings in a dispute that is covered by an arbitration agreement, courts will generally stay its proceedings and decline to hear the dispute.

The [Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region of the People's Republic of China](#), which came into effect on 1 October 2019, allows a party to arbitral proceedings administered by a Chinese arbitral institution to apply to the Court of First Instance for interim measures. Similarly, a party to arbitral proceedings in Hong Kong may apply to the intermediate people's court of the place of residence of the other party for interim measures. Hong Kong is the first and only jurisdiction that can seek mutual assistance from China in interim measures in aid of arbitral proceedings.

Law stated - 6 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes, the AO empowers arbitrators to grant interim measures, including injunctions, asset or evidence preservation orders.

Law stated - 6 May 2025

Award

32 | When and in what form must the award be delivered?

The AO does not prescribe any time limit for the arbitral tribunal to make and deliver an award. Nonetheless, the arbitral tribunal has an overriding duty to render an award in a conscientious, reasonable and timely manner, and not unduly delay in rendering the award.

The parties may also agree on a specified time limit for the arbitral tribunal to render the award.

An award must be in writing, signed by the arbitrators, dated and stated with the seat of arbitration, and shall provide reasons upon which the award is based unless agreed otherwise. After the award is made, a copy signed by the arbitrators shall be delivered to each party.

Law stated - 6 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An arbitral award cannot generally be appealed to the court on the merits. Parties may agree to include the opt-in provisions in Schedule 2 of the AO in the arbitration agreement, which allow a party to challenge an award on the ground of serious irregularity or appeal to the court on questions of law.

Law stated - 6 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

With leave of the court, an award (domestic or foreign) is enforceable in the same way as a Hong Kong court judgment. If leave is not granted, an award can still be enforced under common law by bringing an action based on the award (section 84, AO).

While Hong Kong is not a separate party to the New York convention, upon resumption of sovereignty over Hong Kong on 1 July 1997, the People's Republic of China (PRC) extended its territorial application of the New York Convention to Hong Kong, subject to the reservations originally made by the PRC upon accession to the New York Convention (both the reciprocity reservation and the commercial reservation, which apply to Hong Kong). A Convention award (an award made in a country that is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) can be enforced in Hong Kong following the general procedures in section 84 of the AO (section 87, AO).

Further, with the implementation of the [Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the HKSAR](#) in June 1999 (the 1999 Arbitration Arrangement), Chinese arbitral awards made pursuant to the Chinese Arbitration Law can be enforced in Hong Kong like a convention award. A similar reciprocal arrangement is in place between Macao and Hong Kong.

On 27 November 2020, the Hong Kong Department of Justice and the Supreme People's Court of the People's Republic of China signed the [Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the HKSAR and the Mainland](#) (Supplemental Arbitration Arrangement). Following the enactment of the Arbitration (Amendment) Ordinance 2021 on 19 May 2021, the Supplemental Arbitration Arrangement is now in full effect.

Important amendments made under the Supplemental Arbitration Arrangement:

- Article 1 of the Supplemental Arbitration Arrangement includes the term 'recognition' when referring to enforcement of arbitral awards under the 1999 Arbitration Arrangement, in line with the two-stage approach (ie, the recognition stage and the execution stage) under the New York Convention.
- Article 2 of the Supplemental Arbitration Arrangement clarifies the scope of the arbitral awards that may be mutually recognised and enforced in mainland China and Hong Kong. It removes the condition of 'recognised Mainland arbitral authorities', and hence all awards issued in mainland China pursuant to its Arbitration Law can be enforced in Hong Kong. Also, all arbitral awards (ie, both ad hoc and institutional) rendered in Hong Kong pursuant to the AO can be enforced in mainland China.
- Article 3 of the Supplemental Arbitration Arrangement enables parties to make simultaneous applications to enforce the arbitral award in both Hong Kong courts and mainland Chinese courts. Previously, parallel enforcement of an arbitral award was not permitted under the 1999 Arbitration Arrangement.
- Article 4 of the Supplemental Arbitration Arrangement clarifies that the enforcing courts can impose interim measures before or after the court's acceptance of an application to enforce an arbitral award.

Law stated - 6 May 2025

Costs

35 | Can a successful party recover its costs?

An arbitral tribunal has discretion to give directions on costs in an award. The general practice of 'costs follow the event' is usually adopted. Only reasonable costs are allowed, which may include costs in the preparation of the arbitral proceedings prior to commencing arbitration. A tribunal may also direct a specified limit to the recoverable costs.

Under section 74 of the AO, a provision of an arbitration agreement to the effect that the parties, or any of the parties, must pay their own costs in respect of arbitral proceedings

arising under the agreement is void, unless the provision is part of an agreement to submit to arbitration a dispute that had arisen before the agreement was made.

Furthermore, under section 56(1)(a) of the AO, unless otherwise agreed by the parties, when conducting arbitral proceedings, an arbitral tribunal may require a claimant to give security for costs of the arbitration.

The AO does not specify a list of factors that an arbitral tribunal will consider when determining whether or not to order security for costs. However, section 56(2) of the AO expressly excludes the following grounds for seeking an order for security for costs:

- a natural person ordinarily resident outside Hong Kong; or
- a body corporate or association incorporated or formed under the law of a place outside Hong Kong, or whose central management and control is exercised outside Hong Kong.

Through the enactment of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (which came into effect on 1 February 2019), third-party funding of arbitration is allowed in Hong Kong. Such funding can cover arbitral proceedings and any related court proceedings. Funding can be in the form of money or any other financial assistance in relation to any costs of the arbitration. The funding agreement must be in writing and must be disclosed to the parties to the arbitration and the arbitral tribunal. A Code of Practice was further issued on 7 December 2018, setting out the practices and standards with which third-party funders are ordinarily expected to comply in carrying on activities in connection with third-party funding of arbitration in Hong Kong.

On 16 December 2022, Part 10B of the Arbitration Ordinance and the Arbitration (Outcome Related Fee Structures for Arbitration) Rules were enacted to provide for Outcome Related Fee Structures (ORFS), permitting conditional fee agreements (CFAs), damages-based agreements (DBAs) and hybrid damages-based agreements (hybrid DBAs) in arbitration proceedings in Hong Kong. CFAs are effectively 'no win, no fee' or 'no win, low fee' arrangements and the definition of a 'successful outcome' can be decided between the parties. DBAs are where fees are paid if the client has recovered and obtained a financial benefit in addition to recoverable legal fees. Hybrid DBAs are a combination of an unconditional 'success fee' and the conditions of a DBA. The new system also provides safeguards to protect the interests of clients and to prevent overcharging or abuse of the ORFS regime, including requirements for a written and signed ORFS agreement, and a statutory cap on the amount of uplift fees depending on the type of ORFS agreed to, being no more than 100 per cent of the benchmark fee (fees that would have been paid if not for the ORFS) for CFAs, no more than 50 per cent of the financial benefit recovered by the client for DBAs and hybrid DBAs, and where the client is unsuccessful, no more than 50 per cent of the benchmark fees for hybrid DBAs.

Law stated - 6 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Common forms of alternative dispute resolution (ADR) in Hong Kong are conciliation, mediation, adjudication and arbitration. Arbitration and mediation are the most popular types of ADR in Hong Kong for reasons of confidentiality and availability of experienced arbitrators and mediators in the jurisdiction.

The Hong Kong courts strongly encourage the parties to attempt to resolve their disputes by mediation. Unreasonable refusal to participate in mediation before trial may attract adverse costs consequences in subsequent court proceedings.

Arbitration is commonly used to resolve disputes involving international parties, such as disputes arising out of the international sale of goods. Specialist arbitrations are also well established in Hong Kong, such as intellectual property arbitration, domain name arbitration, maritime arbitration, construction arbitration and investment arbitration.

Lastly, adjudications are commonly used to determine construction disputes.

Law stated - 6 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

ADR is a voluntary process. The courts usually do not compel the parties to participate in an ADR process. However, one of the underlying objectives of the Rules of the High Court is to facilitate the settlement of disputes by encouraging the parties to use an ADR procedure. Parties to litigation are encouraged to attempt mediation (Practice Direction 31). The court also has broad case management powers to impose adverse costs consequences on parties who unreasonably refuse to attempt mediation.

Law stated - 6 May 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Hong Kong's dispute resolution system aims to facilitate resolution and settlement in a cost-efficient manner. Some interesting features are highlighted below:

- Sanctioned offers and sanctioned payments under the court rules: these are designed to encourage the parties to actively consider settlement and avoid prolonging litigation. They involve procedures allowing one party to make offers

or payments into court to settle a dispute. If the other party does not accept the sanctioned offer or payment, he or she bears the risk of costs and interest sanctions if he or she subsequently fails at the trial to do better than the sanctioned offer or payment, even if he or she wins at trial.

- [Apology Ordinance](#) (Chapter 631): Hong Kong was the first Asian jurisdiction to enact an apology legislation (effective from 1 December 2017). Its objective is to prevent the escalation of disputes and facilitate their amicable resolution. Under the Apology Ordinance, an apology does not constitute an express or implied admission of a person's fault or liability in connection with the matter and must not be taken into account in determining fault, liability or any other issue in connection with the matter to the prejudice of the person making the apology. The Apology Ordinance applies to various civil proceedings, including judicial, arbitral, administrative, disciplinary and regulatory proceedings, but not criminal proceedings.
- Hong Kong continues to be a renowned international dispute resolution hub:
 - Hong Kong has an international and diverse pool of legal and dispute resolution talent. As of February 2025, there are over 13,000 solicitors (103 of which are solicitor advocates) and 1,600 barristers, together with more than 900 Hong Kong law firms, 84 registered foreign law firms and 1,578 registered foreign lawyers from 31 jurisdictions.
 - Several reputable international legal and dispute resolution institutions have set up offices in Hong Kong, such as:
 - the Hong Kong International Arbitration Centre (HKIAC);
 - the International Court of Arbitration of the International Chamber of Commerce;
 - the China International Economic and Trade Arbitration Commission;
 - the China Maritime Arbitration Commission;
 - the Permanent Court of Arbitration;
 - the Hong Kong Maritime Arbitration Group; and
 - eBRAM International Online Dispute Resolution Centre.
 - On 21 September 2020, the Baltic and International Maritime Council (BIMCO) announced the adoption of the BIMCO Law and Arbitration Clause 2020. The Law and Arbitration Clause 2020 replaces the Dispute Resolution Clause 2017. Hong Kong is named under the new Arbitration Clause as one of the four designated arbitration venues, alongside London, New York and Singapore, evidencing Hong Kong's strength as a reputable maritime arbitration centre.
 - Referring to HKIAC's [Statistics](#) in 2024, a total of 503 matters were submitted to HKIAC in 2024, of which 352 were arbitration filings, 143 were domain name disputes and eight were mediations. The total amount in dispute across all arbitrations was HK\$106 billion (approximately US\$13.6 billion). The average amount in dispute in administered arbitrations was HK\$375 million (approximately US\$11.8 million). The vast majority of the arbitrations were seated in Hong Kong (97.1 per cent). Disputes were subject to 15

different governing laws. The top three types of disputes were commercial (14.5 per cent), sale of goods (13.9 per cent) and corporate (13.6 per cent).

Law stated - 6 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

'Letter of No Consent' regime affirmed

On 10 April 2024, the Court of Final Appeal (CFA) handed down its decision in *Tam Sze Leung & Ors v Commissioner of Police* [2024] HKCFA 8, ultimately confirming that the 'letter of no consent' regime (LNC Regime), utilised by the Hong Kong Police to effectively freeze bank accounts holding suspected proceeds of crime, is constitutional. The LNC Regime was initially found to be unconstitutional in the Court of First Instance in December 2021, but the decision was then overturned in the Court of Appeal in April 2023. The CFA re-affirmed that the act of freezing a bank account upon receiving an LNC was a bank's own act 'done in compliance with its legal and regulatory duties' and not an infringement on rights by the Hong Kong Police. However, it also raised that *Tam Sze Leung* was not entirely supported by the analysis in *Interush Ltd v Commissioner of Police* [2019] HKCA 70, which focused on the constitutionality of the Organised and Serious Crimes Ordinance rather than the LNC Regime. In any event, the CFA held that the ultimate result of *Interush* remained correct.

Winding-up and Insolvency – extension of 'Guy Lam' principle

Following the landmark Court of Final Appeal judgment of *Guy Kwok-hung Lam v Tor Asia Credit Master Fund LP* [2023] HKCFA 9 on 4 May 2023, the Court of Appeal has in two recent judgments of *Re Simplicity & Vogue Retailing (HK) Co Limited* [2024] HKCA 299 and *Re Shandong Chenming Paper Holdings Limited* [2024] HKCA 352 held respectively that the *Guy Lam* principle regarding exclusive jurisdiction clauses should be applied by analogy to winding-up proceedings between parties with an arbitration clause relevant to the petition debt and arbitrable cross-claims that exceed the petition debt (including cross-claims not constituting a set-off).

On 19 June 2024, on appeal from the Eastern Caribbean Court of Appeal in the British Virgin Islands, the Privy Council diverged from the *Guy Lam* principle in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* [2024] UKPC 16 and held that a debt must be genuinely disputed on substantial grounds before a winding-up application can be dismissed or set aside due to an existing arbitration agreement. Despite this, *Guy Lam* remains good and binding law in Hong Kong.

Arbitration

On 1 June 2024, the HKIAC 2024 Administered Arbitration Rules (2024 Rules) came into effect. The 2024 Rules are largely a refinement of the 2018 Administered Arbitration Rules. Notable updates are included in the 2024 Rules to (1) enhance tribunal powers to determine preliminary issues or otherwise adopt procedures to decide the case efficiently (article 13.6); (2) empower the HKIAC to preserve the efficiency and integrity of the arbitral process including when appointing and revoking arbitrators (article 13.10); and (3) enhance the mechanisms by which a single arbitration can proceed under multiple contracts (article 29.2). The 2024 Rules also introduced a number of new provisions with regards to diversity in arbitral appointments (article 9A), information security (articles 13.1, 45A) and environment impact considerations (articles 13.1, 34.4(f)) when adopting procedures for the conduct of the arbitration to reflect advancing social norms and technological developments. The 2024 Rules should bring the 2018 Administered Arbitration Rules in line with other major institutional arbitration rules.

On 1 March 2025, the Immigration Facilitation Scheme for Persons Participating in Arbitral Proceedings in Hong Kong (Immigration Scheme) was launched to facilitate the entry of foreign individuals who are involved in arbitration proceedings in Hong Kong, including arbitrators, expert and factual witnesses, Counsel, parties to the arbitration and other involved or relevant persons (ie, tribunal secretaries and tribunal-appointed experts). The Immigration Scheme enables foreign nationals, regardless of visa requirements, to enter Hong Kong for the purpose of participating in arbitral proceedings without needing an employment visa.

Key case law

In *Hui Chun Ping v Hui Kau Mo* [2024] HKCFA 32, the Court of Final Appeal (CFA) clarified and re-affirmed that the six-year limitation period imposed under section 20(2) of the Limitation Ordinance applies to claims brought by constructive trustees. The CFA noted that there are two distinct categories of trustees, being category 1 (trusteeship arising from fiduciary duties) and category 2 (trusteeship arising from a wrongful act). Section 20(1), which prescribes an exemption to the time bar in section 20(2), only applies to category 1 trustees but not category 2 trustees. In these circumstances, unless a breach has been deliberately concealed, a constructive trustee must bring their claim within six years of a breach or the discovery of such breach. The CFA also held that, accordingly, ancillary and alternative claims (ie, accounting or equitable compensation) are also time-barred where the primary claim has been time-barred.

In *Sir Elly Kadoorie & Sons Ltd v Samantha Jane Bradley* [2024] HKCA 747, the Court of Appeal (CA) accepted that there was scope for the common law tort of harassment to develop to permit a corporate entity to bring an action in its own capacity, overturning the lower court's judgment that dismissed the company's claim on the grounds that the corporate entity did not have the 'same interest' as the individuals it sought to represent. The CA found that, where the claimed harassment was directed institutionally at the company, there was force in the company's contention that permitting it to sue as a corporate entity would be convenient and costs efficient.

In *Mantra Dao Inc. and Another v John Patrick Mullin and Others* [2024] HKCFI 2099, the Court of First Instance (CFI) granted an interim disclosure order compelling the disclosure of financial records for a decentralised autonomous organisation (DAO) finance platform in the cryptocurrency industry, on the grounds that financial transparency was critical to protect the plaintiff's interests, which are inherently complicated by the fast-paced and anonymous nature of the cryptocurrency industry. Concerns regarding confidentiality risks could be protected with properly worded undertakings, and there was no undue hardship caused by the disclosure as the DAO already had a duty to maintain proper accounts. This decision from the CFI signals that the courts are willing to intervene even in decentralised systems such as DAOs to ensure transparency and accountability, and the ability and willingness of the courts to tailor existing methods of interim relief to the unique risks present in the cryptocurrency industry. The order granted by the CFI requires the DAO to disclose financial spreadsheets and supporting documents (to be disclosed only to the plaintiff's legal and financial advisers, subject to confidentiality and non-disclosure undertakings).

Procedural updates

On 28 October 2024, the revised Practice Direction 30.1 came into effect, introducing key changes to the mechanism for relatives and/or guardians to apply for management of the property and affairs of Mentally Incapacitated Persons (MIP) pursuant to the Mental Health Ordinance (Cap 136). The Official Solicitor must now review application papers before they are placed before a judge, and new procedural guidelines have been issued, including the provision of new standard forms (Supplemental Certificate of Family and Property) and the mandatory submission of skeleton arguments. Other key changes include the potential for courts to direct families to mediation, provisions for urgent cases (including provisions for interim receivers or provisional committees), and new directions regarding bringing and defending litigation on behalf of MIPs and the court's approval of settlement for proceedings involving MIPs.

On 2 April 2025, the Checklist for Application of Certificate of Compliance (Winding-Up) took effect, requiring creditors to file and submit the Checklist in parallel to seeking an appointment date from the court. This aims to expedite the process with a view to maintaining the court's targeted three-month turnaround time between the issuance of a petition and the Certificate of Compliance. A similar checklist mechanism applies to bankruptcy proceedings in situations such as where a statutory demand has not been served personally on a debtor.

Technological updates

On 28 March 2025, the Courts (Remote Hearing) Ordinance took effect, which enables judges and judicial officers to order remote hearings of court proceedings when they deem suitable and appropriate which will enhance the efficiency of court operations and save time for participants in legal proceedings in Hong Kong. As of 1 April 2025, Hong Kong is also currently undergoing a two-year pilot scheme for the live webcast of proceedings in the Court of Final Appeal, to enhance the transparency of court procedures and strengthen public confidence in the judicial process.

Cybersecurity updates

On 19 March 2025, the Legislative Council approved the 'Protection of Critical Infrastructures (Computer Systems) Bill', which aims to strengthen cybersecurity measures and impose statutory requirements on operators of critical infrastructures, which is currently defined as infrastructures that are essential for the maintenance of society, public livelihood and safety. The industries and sectors highlighted under the Bill are energy, information technology, banking and finance, air, land and maritime transport, healthcare and telecommunications. Cybersecurity measures introduced under the bill include obligations relating to the maintenance and risk assessments of computer and security systems, security management and emergency response plans against cybersecurity incidents, and the notification requirements – such as an obligation to notify the relevant authority (to be set up by the Hong Kong government) of a disruption or possibility of disruption to the core function of a critical infrastructure within 12 hours. The targeted effective date of the Bill is 1 January 2026.

On 31 March 2025, the Privacy Commissioner for Personal Data (PCPD) published the 'Checklist on Guidelines for the Use of Generative AI by Employees', which makes recommendations for organisations developing internal policies and instructions on the usage of generative AI, including scope of permissible use, protection of data privacy, and lawful and ethical use. It is also suggested that organisations should specify consequences for employee violation of such internal policies with reference to the PCPD's 'Artificial Intelligence: Model Personal Data Protection Framework'.

Law stated - 6 May 2025

HILL DICKINSON

Bryan O'Hare
Pui Yip Leung
Rachel Yeung

bryan.ohare@hilldickinson.com
puiyip.leung@hilldickinson.com
rachel.yeung@hilldickinson.com

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Israeli civil court system is comprised of three instances. Magistrates' courts are trial courts. Magistrates' courts serve as courts of first instance for most civil disputes, with subject matter jurisdiction of claims in which the sum claimed is not higher than 2.5 million New Israeli shekels and some real estate cases. A single judge hears cases in the magistrate courts.

The district courts are intermediate appellate courts. They have appellate jurisdiction over magistrates' courts and have trial jurisdiction in monetary claims exceeding 2.5 million shekels and disputes over land ownership (typically with one judge hearing the case). In addition, the district court has jurisdiction in certain matters defined by the law, including real estate ownership disputes, certain corporation matters, bankruptcies and companies' liquidations proceedings, and administrative proceedings. District courts have residual jurisdiction over civil cases that the magistrate courts do not cover.

The Tel Aviv and Haifa District Courts each have a specialised economic division. These economic courts have exclusive subject matter jurisdiction over financial matters such as derivatives claims. Special courts include traffic, labour and local affairs courts. Religious courts have exclusive jurisdiction in matters of personal status, such as marriage and divorce.

Israel's Supreme Court is the ultimate appellate jurisdiction nationwide. The Supreme Court is the final court of appeals and a High Court of Justice (HCJ). As the High Court of Justice (Bagatz), the Supreme Court is hearing primarily administrative and constitutional petitions for judicial review of executive action and legislation.

The Supreme Court consists of 13 Justices and two Registrars. The President of the Supreme Court heads the Israeli judicial system. Generally, the Supreme Court sits in panels of three. However, a single Justice may hear certain matters, such as interlocutory applications, temporary orders and applications for leave to appeal.

Law stated - 7 May 2024

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Professional judges comprise Israeli civil courts, and there is no jury system. The legal system is adversarial. The passive role of the judge in the adversarial system grants the parties significant control over litigation management. Yet, in practice, Israeli judges have a more active role.

Where a civil claim is brought in the court, the procedural rules governing such claims are found in the civil procedure regulations. Recently, these rules of procedure underwent a

massive reform. The new regulations entered into effect in 2021, detailing the rules for conducting court proceedings. The new Israeli rules of civil procedure formally express the trend toward more robust judicial activism and reflect the managerial role of judges. Under the new rules, judges formally received broadened authority to conduct legal proceedings efficiently and justly to resolve the conflict between the parties quickly. For instance, the pretrial stage allows the judge significant involvement in the process. During pretrial, the judge can cross-examine witnesses or the parties themselves to resolve the case at that stage. Also, in the trial, during cross-examination of witnesses, the judge may ask witnesses questions. The new rules formalise the common practice of judges who offer settlement proposals to the parties.

Law stated - 7 May 2024

Limitation issues

3 | What are the time limits for bringing civil claims?

Generally, civil claims have a seven-year statute of limitations; in a case of a claim relating to registered land – 25 years. The parties may contractually agree on a more extended or shorter limitations period for matters other than real property, but at least six months.

Law stated - 7 May 2024

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Generally, there are no pre-action conduct requirements before commencing a commercial lawsuit. Administrative petitions require the exhaustion of remedies with the relevant agencies before filing the petition.

Law stated - 7 May 2024

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings commence when the plaintiff submits a statement of claim to the court. The statement of claim, along with a summons to court, is served on the defendant.

The Israeli courts are under a heavy workload. The workload affects the management of the cases and their duration, which normally takes several years to be fully conducted. Some

tools to alleviate the burden in courts are mandatory mediation in most cases submitted to magistrates' courts, attempts to reach settlements and referral of disputes to arbitration.

The courts usually charge a fee for issuing a claim. In a monetary claim, the regular fee is calculated as 2.5 per cent of the claim value (1.25 per cent must be paid on the day of filing the claim and the other 1.25 per cent before evidentiary hearings).

Law stated - 7 May 2024

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The statement of claim and a summons is served to the defendant. Generally, the defendant must serve an answer within 60 days, and the plaintiff may serve a reply to the statement of defence within 14 days.

If the defendant wishes to file a counter-claim, he or she can do so within the said 60 days, and then the other party has to submit a counter-defence within another 60 days.

After the last pleading is submitted to court, generally, the parties exchange demands for documents disclosure and written interrogatories.

Usually, pretrial hearings are scheduled according to the judge's calendar pursuant to the submission of the last pleading and following mutual documents disclosure.

Law stated - 7 May 2024

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The parties can challenge the court's jurisdiction. For example, when defendants claim that there is an arbitration agreement between the parties, they can file an application to delay the proceedings in the lawsuit. In addition, the parties can apply for an anti-suit injunction in the case of *forum non conveniens* or in case of *lis alibi pendens* (ie, if a previous claim was already filed outside the country) and due to international comity.

Law stated - 7 May 2024

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties have limited control over procedures and timetables. Generally, the timetable is set by the regulations and the court's orders. Nonetheless, the courts tend to grant time

extensions more liberally when the parties reach procedural agreements concerning time extensions.

Law stated - 7 May 2024

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Parties are bound to full mutual disclosure of the documents that are relevant to the case. During discovery, each party discloses to the other party the documents relevant to the case in its possession, custody or control, and the opposite party may request any additional document he or she considers to be relevant to the case. Following these requests and responses, motions are submitted concerning the preliminary proceedings under a strict timetable before the first pretrial hearing.

Law stated - 7 May 2024

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Privileged documents, such as attorney–client communications or materials prepared in anticipation of litigation, are not presented to the other party. Yet, in the documents discovery affidavit, it is customary to mention their existence and indicate that these documents are privileged. The client may waive the confidentiality of attorney–client communications protected by the attorney–client privilege.

Law stated - 7 May 2024

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

Typically, each party submits a list of witnesses, accompanied by a brief summary outlining the anticipated substance of each witness's testimony.

Law stated - 7 May 2024

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Instead of oral testimony, the witnesses (including experts) often submit their testimony in a written affidavit (or a written expert opinion). The witnesses and experts are subject to cross-examination in court. Following the recent civil procedure reform, preference is given to hearing oral summations and testimonies. The court decides whether witnesses shall give oral evidence or file affidavits. The affidavits (or expert witness written opinion), including their appendices, serve as evidence. The opposing party may object to the admissibility of documents attached to the affidavits or submitted as part of cross-examination if these documents were not disclosed during the preliminary proceedings.

Law stated - 7 May 2024

Interim remedies

13 | What interim remedies are available?

Interim remedies are available for parties, including temporary restraining orders, preliminary injunctions and Prejudgment Seizures. Typically, an interim remedy is issued to maintain the status quo when the lawsuit is filed until a final decision is made on the merits to ensure the implementation of the judgment if the permanent remedies are granted.

Law stated - 7 May 2024

Remedies

14 | What substantive remedies are available?

Remedies may include enforcement of contracts, damages and declaratory relief.

Law stated - 7 May 2024

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In general, the parties must keep settlement discussions confidential.

Also in most cases, the parties must schedule an appointment among themselves before the first hearing in court, in order to reach a settlement or at least minimise the disputed issues. The parties should file a joint report to the court stating the reached agreements.

In addition, the judge can offer settlement proposals to the parties any time, if both are interested.

It should be noted that if the parties reach a settlement at a relatively early stage of the procedure, the plaintiff can get back a substantial part of the court fee payment.

Law stated - 7 May 2024

Enforcement

16 | What means of enforcement are available?

The Law Enforcement and Collection System Authority is responsible for enforcing judicial decisions (mainly monetary verdicts).

If a court decision is disobeyed, the court may issue a contempt order against that party, which may lead to prison in some cases. It should be noted that contempt orders are usually not applicable with respect to monetary verdicts.

Law stated - 7 May 2024

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Generally, court hearings are public. In certain circumstances, court hearings are held behind closed doors (eg, in cases of trade secrets or other sensitive information, or to maintain national security, etc).

Decisions and judgments may be public online. If a third party wishes to access all the documents included in a specific court file, they may submit an application detailing its reasoning for inspecting the file.

When one of the parties claims that a certain document is confidential, they may submit it to the court in a sealed envelope (and not scan it into the digital system).

Law stated - 7 May 2024

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Generally, prevailing parties can recover court costs and attorney's fees from the losing party. The winning party may submit proof of its actual, reasonable expenses (eg, fee agreements and receipts) for reimbursement. Courts have broad discretion to decide the amount of costs.

The defendant may request the court to order the plaintiff to deposit collateral for expenses, and if the plaintiff does not obey such an order, the court may hold the claim.

In the case of appeal, the appellant must deposit collateral for expenses, unless there is a reason for exemption.

Generally in arbitration proceedings, arbitrators tend to award costs in a higher amount than courts.

Law stated - 7 May 2024

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

There is flexibility in setting fee agreements between lawyers and their clients, including 'no win, no fee' or other types of contingency or conditional fee arrangements. Some areas of law set limitations or caps on such arrangements. Lawyers are usually barred from paying court fees or giving loans to their clients. Third-party financing of claims is permissible.

Law stated - 7 May 2024

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Insurance is available to cover legal costs. Terms vary by insurance policy coverage.

Law stated - 7 May 2024

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions are available for litigants with similar claims and are common in banking, securities, insurance, environment, antitrust and consumer protection. Limited causes of action are available for litigants against the state, such as in cases of tax overcharge.

Law stated - 7 May 2024

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In cases that were heard in the magistrate courts, the losing party has the right to appeal to the district court regarding the final verdict. In cases that were heard in district courts, the losing party has the right to appeal to the Supreme Court regarding the final verdict.

The district courts hear appeals regarding final judgments of the magistrate courts and applications for leave to appeal on interim decisions of the magistrate courts.

The Supreme Court primarily hears appeals regarding the final judgments of the district courts and applications for leave to appeal on interim decisions of district courts as well as applications for leave to appeal on decisions of district courts that were given as appellate courts.

Leave to appeal is generally granted when the question is general, beyond the applicant's case, or when a substantial injustice has occurred.

It is worth noting that courts can dismiss an appeal without hearing the other party.

Law stated - 7 May 2024

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The Foreign Judgments Enforcement Act (FJEA) governs the recognition and enforcement of foreign judgments in Israel. The FJEA provides for separate procedures for recognition of a foreign judgment: declaration of the foreign judgment as an enforceable judgment, direct recognition and indirect (incidental) recognition.

Under the FJEA, a foreign judgment is eligible for enforcement if the following requirements are met: the foreign judgment must be rendered by a court of competent jurisdiction according to the laws of the state of origin; the judgment must be final; the obligation imposed by the judgment must be enforceable according to Israeli law; the content of the judgment must be compatible with public policy; and the judgment must be enforceable in the state of origin.

The enforcement of foreign judgments is subject to reciprocity. This means that a foreign judgment shall not be declared enforceable if entered in a state under the laws of which judgments entered by Israel courts are not enforceable. This requirement has been interpreted by Israeli courts as 'potential of enforcement.' The court may, however, on application by the Israeli Attorney General, enforce a foreign judgment even where there is no reciprocity.

An application to enforce foreign judgments is generally time-barred within five years of the date of the foreign judgment, unless an agreement was reached between Israel and the country where the judgment was issued for a different period, or if the court found special reasons justifying the delay.

The defendant may raise the following contends against the enforcement of a foreign judgment:

- the judgment was obtained by fraud;

- the defendant was not given a reasonable chance to bring a defense before the foreign court;
- the judgment was given by a court with no jurisdiction over the case according to Israeli private international law;
- the existence of inconsistent judgments on the same subject matter and between the same parties; or
- at the time that the action was brought in the foreign court, a lawsuit on the same subject matter between the same parties was pending before an Israeli court.

Israel has bilateral treaties with several countries related to the enforcement and recognition of foreign judgments.

Law stated - 7 May 2024

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Israel is a signatory to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. It provides apostille services and recognises legal documents from foreign countries that are party to the convention, which were authenticated according to the Convention.

Law stated - 7 May 2024

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

The Israeli Arbitration Act is primarily based on British law.

However, recently, The International Commercial Arbitration Act (ICAA) was enacted in Israel.

The ICAA applies to international arbitrations conducted in Israel the rules of the UNCITRAL Model Law (with some adjustments). With the adoption of the law, parties to a commercial agreement will be able to establish an arbitration clause according to which potential disputes between them will be discussed in Israel according to the International Commercial Arbitration Law, and accordingly conduct arbitrations in Israel according to recognised standards at the international level.

Law stated - 7 May 2024

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The Israeli Arbitration Act requires an arbitration agreement to be in writing. The writing requirement can be satisfied as a provision in a general agreement. When the parties' intent to resolve the disputes through arbitration is clear, courts shall enforce the arbitration provision.

Law stated - 7 May 2024

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration clause does not stipulate the arbitrator's identity, and the parties disagree, they can request the competent court to appoint a single arbitrator.

The court may remove an arbitrator if the arbitrator is unworthy of trust (eg, due to a conflict of interests); the arbitrator's conduct during the arbitration distorts justice, or the arbitrator cannot fulfil their role.

Law stated - 7 May 2024

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The court appoints the arbitrator unless the parties agree on the arbitrator's identity. Courts will often appoint a retired judge or an esteemed lawyer who is qualified to adjudicate the matter.

Israeli arbitration establishments have 'pools' of arbitrators, and the establishment's president typically appoints an arbitrator from the arbitrator's list.

Law stated - 7 May 2024

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act sets default rules which exempt the arbitrator from the civil procedure rules, substantive law and evidence rules. The arbitrator should detail his reasoning. It is customary to require the arbitrator to adhere to the substantive law in an arbitration clause.

Law stated - 7 May 2024

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Generally, courts do not intervene during an arbitration except in specific circumstances, such as when the parties request to remove the arbitrator.

Courts have auxiliary powers to assist the arbitrator in areas such as the invitation of witnesses, contempt of court against witnesses, collection of evidence, foreclosure of assets, temporary restraining orders and interim relief.

If a party addresses the court during a pending arbitration, the arbitration proceedings are not ceased unless the court instructs otherwise.

Law stated - 7 May 2024

Interim relief

31 | Do arbitrators have powers to grant interim relief?

The arbitrator may sometimes grant interim relief; or request the competent court to use its auxiliary powers to grant interim relief.

Law stated - 7 May 2024

Award

32 | When and in what form must the award be delivered?

The arbitration award must be in writing and signed by the arbitrator.

The arbitrator must provide the arbitration award within three months from the day he or she started hearing the case, or from the day he or she was required to hear the case by a written notification from a party, whichever is earlier.

However, the arbitrator may extend the period up to three additional months.

Law stated - 7 May 2024

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Ten statutory grounds allow the court to revoke an arbitration award, including lack of authority, lack of reasoning (when applicable), the award contradicts public policy, the arbitrator was not lawfully appointed and due process considerations.

The parties may also agree that an appellate arbitrator will hear an appeal or that the losing party will be entitled to submit to court a leave to appeal.

If the arbitration agreement stipulated a right to request the court leave to appeal, the parties can request so where a fundamental error in applying the law caused grave injustice.

Law stated - 7 May 2024

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

A domestic award can be enforced when submitted by the winning party to the competent court for approval and the other party does not submit a request for cancellation or a request for a leave to appeal.

A foreign award may be enforced according to the New York Convention, which was incorporated into domestic law.

Recently, Israel enacted the International Commercial Arbitration Act (ICAA). The ICAA incorporates the UNCITRAL Model Law on International Commercial Arbitration (with certain modifications) into Israeli law and applies it to international arbitrations conducted within Israel. Where the ICAA governs, courts may refuse to enforce an arbitral award only on the basis of specific exceptions enumerated in the statute.

Law stated - 7 May 2024

Costs

35 | Can a successful party recover its costs?

A successful party can recover its costs. The arbitrator is entitled to determine costs.

Law stated - 7 May 2024

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The Israeli rules of civil procedure incorporate alternative dispute-resolution procedures into the legal process. The referral of cases from the court system reflects the judicial attempt to decrease case load and minimise litigation costs. The most common alternative dispute resolution (ADR) processes in Israel are mediation and arbitration.

Law stated - 7 May 2024

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Commonly, the court asks the parties to consider ADR. In most cases applied to the magistrate court, the civil procedure regulations set forth a mandatory mediation meeting by a court-appointed mediator before the first hearing. However, if such a meeting is unsuccessful, the court cannot compel the parties to continue participating in the ADR process.

Law stated - 7 May 2024

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Israel is considered a mixed legal system of civil law and common law. This is evident, for example, in the combination of codified and precedent-based laws. Under the binding precedent principle, a precedent ruled by the Supreme Court binds every court except the Supreme Court. A ruling by a District court guides the Magistrate courts.

Law stated - 7 May 2024

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

An attempt was recently made in Israel to carry out a constitutional legal reform that included, among other things, a new clause in a constitutional law, according to which the authority of the High Court of Justice to annul a government decision in exceptional cases due to extreme unreasonableness was abolished.



However, the High Court of Justice invalidated the said reform of the constitutional law and determined that it was enacted illegally.

Law stated - 7 May 2024

[Lipa Meir & Co](#)

Alon Pomeranc
Reut Beitz

pomeranc@lipameir.co.il
reut@lipameir.co.il

[Lipa Meir & Co](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Italian civil court system operates a three-stage review, two on the merits and one limited to the correct application of the law. As to the merits courts, there are:

- the Peace Judge, competent for small claims, including: (1) disputes relating to movable goods up to €10,000; and (2) compensation for damages caused by vehicles and boats up to €25,000. Judgments issued by the Peace Judge can be appealed (2nd degree on the merits) before the tribunal; and
- tribunals, which are competent for the disputes exceeding the competence of the Peace Judge. Tribunals hear cases through single judges, but for certain limited, more relevant cases where mandatory statutory provisions expressly prescribe the presence of a panel of three judges (see article 50 Code of Civil Procedure, CCP).

Tribunals are internally organised in sections with different subject matter specialisations. Additionally, some sections operate according to special provisions, such as the insolvency, employment and the business sections. These latter are specialised in more complex cases (eg, such as those concerning IP, antitrust and corporate law).

The decisions of a tribunal can be appealed to the competent Court of Appeal. In the Italian judicial system, there are 26 appellate districts, generally corresponding to the territory of each Italian region.

They operate through panels of three judges. Courts of Appeal are organised in sections, with specialisations corresponding to those of the tribunals.

Courts of Appeal decisions can be challenged before the Supreme Court of Cassation for violations of substantial or procedural rules, for vices of motivation or for issues pertaining to jurisdiction, with no review of the merits of the case. The Supreme Court of Cassation ensures certainty and consistency in the interpretation of the law.

Law stated - 31 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The judge does not have an inquisitorial role. It is up to the parties to submit evidence, such as documents, requests for witnesses' examination, party questioning or orders to show certain documents. The judge evaluates the relevance and admissibility of these requests, including witness examinations, requests to order a party or a third party to produce a document or requests to appoint an expert. The judge directly examines witnesses, as cross-examination is not provided by the CCP.

There is no jury involved in civil cases, so there is no juror selection process. The judge is the only responsible for fact-finding, applying the law to the facts submitted by the parties and issuing the judgment.

Law stated - 31 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The general statute of limitation is 10 years for contract claims and five years for tort claims (non-contractual claims). Different limitation periods may apply, for instance, if the conduct implies a criminal violation, or in connection with specific subject matters, such as insurance, car accidents, etc.

Interruption or suspension of the applicable limitation period is not subject to parties' agreement since it is strictly governed by the Civil Code (CC). However, the limitation is interrupted not only by the start of a legal action in court, but also by an out-of-court demand letter (article 2943 CC): therefore, while the parties cannot agree on extensions, they may unilaterally with just a letter practically extend the limitation period.

Law stated - 31 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Mediation or 'assisted negotiation' are, in certain cases, conditions for the admissibility of the claim. The mandatory mediation attempt applies to certain subject matters, including lease agreements, loans, family agreements, insurance, medical malpractice, joint ventures, inheritance, supply of goods, franchising or partnerships. Mandatory assisted negotiation is a preliminary condition of admissibility of claims for damages caused by vehicles or boat accidents, as well as of claims for payment up to €50,000.

The CCP does not provide for pre-action disclosure orders and pre-action exchange of documents. Plaintiffs are not required to send a pre-action letter, and the potential defendant is not required to respond. However, it is quite frequent that a party, before filing a claim, sends warning letters in preparation of the court dispute, as well as demands letters to toll statute of limitation.

Law stated - 31 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to

| handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings are commenced by serving the counter-party with a writ of summons, which must include the specific requirements set by the CCP. The writ of summons is served by a court bailiff, or by the appointed lawyer by certified email.

In some specific cases (for instance, labour law, family law proceedings or interim/urgent proceedings, among others), the proceeding is commenced by filing a petition and attached documents with the court. The judge shall set a hearing by decree and order the claimant to serve the petition and the court decree with the defendant.

Italian courts have a significant workload, and their efficiency may vary depending on organisational issues. For instance, the Court of Milan (handling major corporate disputes and cases involving foreign parties) generally manages cases efficiently and decides in a reasonable time frame.

Italian courts charge a fee for commencing civil proceedings. The fee is set by the Ministry of Justice and depends on the type and value of the claim.

Law stated - 31 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Standard civil proceedings begin with the service of a writ of summons, which must set the date of the hearing no earlier than 120 days from service to the defendant (or 150 days for defendants residing abroad). The defendant must file its statement of defence at least 70 days before the first hearing.

Within 15 days of the defendant's statement of defence is filed, the court performs preliminary checks, including verifying the participation of all the necessary parties, the need to call a third party, the completeness of the writ of summons, the absence of the defendant, etc. If no irregularity is found, the court grants the parties three procedural terms (40, 20 and 10 days before the hearing) to file additional pleadings to amend and/or clarify their defences and submit new documents and/or requests for evidence. At the first hearing, the judge verifies whether the dispute can be decided based on the submitted documents or if additional evidence is required.

When the case is ready for a decision, the judge sets the hearing for the decision and assigns the parties three procedural terms to submit their final pleadings, submissions and rebuttals, unless they waive these terms. The final judgment should then follow within 60 days (in the case of a panel of judges) and 30 days (in the case of a single judge).

Law stated - 31 May 2025

Challenging the court's jurisdiction

|

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

In general terms, Italian courts have jurisdiction if the defendant is residing or domiciled in Italy or, in the case of companies, has its legal office in Italy. The general criteria are provided by Law No. 218/1995 (articles 3–11). For civil and commercial matters, EU Regulation No. 1215 of 2012 applies and is considered applicable for regulating conflicts of jurisdiction, even if they concern non-EU states.

A party can object to the lack of jurisdiction with the first available defence; otherwise, the jurisdiction – even where lacking – is considered accepted by the defendant. The court can decide on jurisdiction at the preliminary stage of the proceedings (if the objection is likely to be grounded) or at the end of the proceedings, together with the merits.

Anti-suit orders strictly intended are not available in Italy.

Law stated - 31 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

In Italy, the procedural rules and deadlines are primarily set by the CCP and by the judge. The parties may request the court to anticipate certain procedural activities based on documented grounds or ask for postponements. For instance, if a party proves it was unable to meet a procedural deadline for reasons beyond its control (eg, force majeure), it can ask the court to authorise a new filing. Ultimately, the judge sets the timetable of the proceedings, and the court workload may play a significant role.

Law stated - 31 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Pending trial, documents digitally filed by the parties in the court folder remain with the court until the end of the proceeding. Under article 2961 CC, courts and arbitrators must preserve all legal documents for three years after the dispute has been decided or settled.

Parties are not subject to any discovery obligation or required to file documents unhelpful to their case. Parties only file documents they consider relevant to support their case. However, courts can, upon application made by one of the parties, order the counterparty or a third party to: (1) disclose documents in their custody deemed necessary to resolve a crucial issue; and (2) permit inspections of their person or goods that are essential to knowing the facts of the case.

Disclosure obligations are provided under the rules governing class actions proceedings, as will soon be introduced for product liability cases, in compliance with the [New EU Directive on Liability for Defective Products](#).

Law stated - 31 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

But for the confidentiality of the mediation, Italian procedural law does not directly regulate privileges. They are indirectly protected through the Italian Code of Ethics of Lawyers. Based on article 28, privilege applies to communications between lawyers and their clients, as recently confirmed by the European Court of Human Rights in *Saber v Norway* case (17 December 2020). Moreover, under article 48 letters and correspondence expressly categorised as ‘confidential’ or containing settlement proposals exchanged with lawyers are confidential and cannot be filed, shown or referred to in court.

The Italian Privacy Code (Legislative Decree No. 196 of 30 June 2003) (IPC) also impacts the handling of privileged documents. IPC ensures that personal data is processed with respect for the rights and dignity of individuals. Legal documents should only contain personal data necessary for their specific purpose.

In-house counsel are not subject to the relevant Code of Ethics of Lawyers as they are not enrolled in the Bar Association. Therefore, legal advice, including opinions issued by in-house lawyers or third parties, can be disclosed in court.

Law stated - 31 May 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

Prior to trial, parties typically do not exchange any documents. The exchange of documents and evidence usually occurs during the evidence collection stage.

However, in urgent situations, parties can request the court to take evidence before the proceeding begins. For instance, parties can ask the court to authorise technical assessments or judicial inspections regarding the status of the sites or the quality or condition of goods, where there is no possibility of taking the evidence at a later stage.

Law stated - 31 May 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Italian civil procedure does not provide for trials equivalent to those in the US or English legal systems, especially because the evidence collection is not concentrated in time and, in certain cases, may not even be conducted by the same individual judge who will issue the final decision.

Evidence may include documents, witness examinations and expert opinions. The parties involved in civil proceedings are responsible for presenting evidence in support of their claims.

Normally, witness examination is carried out orally. Witnesses are not subject to direct, cross nor redirect-examination by the other party. Only the judge may ask the witness to clarify their testimony and ensures that the evidence is relevant and reliable.

Under article 257-bis of the CCP, the court can also ask the witness to provide written answers to questions posed by the parties and admitted by the court, but generally witnesses are heard in court.

The court can appoint an expert to clarify facts or technical and complex issues when the claim brought by the parties is not solely legal. The parties may appoint their own experts, who can participate in the court-appointed expert's investigations, provide their own observations and submit requests or objections. Experts provide their assessment in writing, filing a report within the term given by the court. They may also be requested to appear in court to provide clarifications.

Law stated - 31 May 2025

Interim remedies

13 | What interim remedies are available?

Precautionary/preventive measures are the most frequent types of interim measures. Their aim is to minimise the risk that the time required to obtain an enforceable judgment on the merits would undermine the claimant's ability to effectively satisfy their rights. These measures also apply to the protection of foreign proceedings and arbitrations (as long as the arbitration clause does not grant arbitrators the power to issue interim measures).

The main precautionary/preventive measures are:

- precautionary seizure/asset freeze: allows a creditor whose prospects of success in the substantive proceedings appear likely and who has a well-founded fear of losing the security of their credit or loan, to request the court to authorise the seizure of the debtor's movable or immovable property or the sums and assets due;
- judicial seizure of an asset: may be ordered by the judge in connection with (1) specific movable or immovable assets when the relevant ownership or right of possession is disputed or (2) evidence (eg, documents or records) when the right of exhibition or communication is disputed; and
- urgent measures under article 700 CCP: a catch-all provision granting the judge the power to adopt an interim measure where none of the existing statutory remedies apply.

Law stated - 31 May 2025

Remedies

14 | What substantive remedies are available?

A claimant may seek specific performance (ie, to force the other party to fulfil its obligations under a contract) or damage compensation, in connection with a breach of contract or an extra-contractual claim (ie, damages caused by negligence or wilful misconduct). Damages may be both material and non-material (moral), and must be proven. If it is not possible to determine the exact amount of a damage, the judge may liquidate it on an equitable basis.

In general terms, punitive damages are not recognised in the Italian legal system: the damage compensation is aimed at reimbursing a party for the losses suffered, rather than punishing the damaging party. However, damage compensation with punitive purposes can be provided under specific statutory provisions, such as in the case of vexatious litigation (article 96 CCP) or in other limited cases.

Interest is payable on money judgments. If an interest rate is not agreed in a contract, legal interest applies or, for commercial transactions, the higher rates set under Decree 231/2002.

Law stated - 31 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Under article 1965 ff CC, parties may reach an agreement to settle out-of-court or in-court disputes or prevent a future dispute. Negotiations handled by lawyers are confidential and professional rules prevent lawyers from filing correspondence concerning settlement negotiations in court.

However, a settlement can also be reached following a proposal made by the judge during the proceeding.

Law stated - 31 May 2025

Enforcement

16 | What means of enforcement are available?

Diverse types of enforcement proceedings are available, depending on the content of the judgment to be enforced. In the case of an order to pay a sum of money, the winning party

can enforce the judgment by attaching real estate, movable assets or assets held by third parties, such as a bank account.

Fraudulent or simulated acts committed to avoid the fulfilment of court orders may imply criminal liability, sanctioned with fines and conviction.

Law stated - 31 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Under Italian law, court hearings for the oral discussion of the case are held in public, unless the court determines otherwise for reasons of public order, security of the state or public morality. The other hearings are attended only by the parties and their lawyers.

Court documents, including pleadings, witness statements and orders are stored in the digital court file and cannot be accessed by any third party not involved in the dispute. Final judgments are then published by the clerk's office after personal data has been removed in accordance with privacy rules.

Law stated - 31 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

As a rule, the losing party bears its own costs as well as those of the successful party, including court's fees and attorneys' fees, in the amount determined by the court. However, in certain cases and based on a motivated decision, the court may deviate from this principle and decide that each party has to bear its own costs.

Courts liquidate legal costs within the range (minimum, medium, maximum) set by Ministerial Decree, based on the value of the dispute and the stage or type of the proceedings. Such an amount can be adjusted based on the complexity of the case, the number of the parties and other factors to be evaluated by the court. Court-liquidated fees are independent of any arrangements a party may have with their lawyer.

Law stated - 31 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties

bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Lawyers and clients are free to agree on a wide range of fee arrangements, including fees based on time, a lump sum, or based on the completion and timing of the service, or as a percentage of the value of the matter or on its expected benefits, not only at a strictly financial level, the claimant. Contingency fee agreements are thus possible; however, Italian law prohibits agreements where the lawyer receives, in whole or in part, the proceeds (money or assets) of the claim.

Third-party litigation funding is available as well in Italy. The Supreme Court recently confirmed that litigation funding agreements can be validly entered by the litigant and the funder (see [here](#)).

The litigation funding agreement may provide that the funders get a share of the proceeds if the case is successful, and claimants may sell a portion of the claim in return for a fixed upfront payment. As to the possibility for the defendant to settle the claim by paying a fixed sum, this would occur in the context of a settlement agreement with the counterparty, to which a funder may take part.

Law stated - 31 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Insurance coverage is available to cover the legal costs of the insured party and the opponent's costs depending on the relevant insurance agreement.

Law stated - 31 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In Italy, class actions are governed by the CCP and Legislative Decree No. 206 of 6 September 2005 (Consumer Code). Recently, the Italian legislator has made significant efforts to enhance the class action mechanism and increase its practical use by introducing new rules in the CCP.

Articles 840-bis to 840-sexiesdecies CCP govern the 'general' class action. It can be commenced by any member of the class or by non-profit organisations or associations duly registered with the Ministry of Justice for violations of 'homogeneous individual rights' (ie, individual rights that, although belonging to different subjects, arise from a common situation). The action may be brought against companies or entities providing public services and aims to seek compensatory or injunctive relief.

Moreover, article 140-ter ff of the Consumer Code governs the 'special' class action for consumer protection. This type of class action can only be initiated by consumer associations meeting certain criteria listed by the Ministry of Enterprises and Made in Italy, or by independent public bodies for violations of collective consumer interests in specific matters listed in Legislative Decree No. 28/2023.

Law stated - 31 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The losing party can appeal a first instance judgment based on errors in fact (eg, incorrect findings from the evidence presented), errors in law (eg, misinterpretation of the law) or procedural violations, explaining why such errors and violations are relevant for the decision of the case. The appellant must specify the judgment sections to be reformed and clarify the errors, violations or misinterpretations of the first instance judge. New claims or new evidence are not admitted, except under very limited circumstances. The court of appeals can fully revise the merits of the case, within the grounds set by the appellant.

The courts of appeals' decision can be further appealed before the Supreme Court of Cassation exclusively on grounds of violation or misinterpretation of law, jurisdiction or competence issues, nullity of the judgment or the proceedings or failure to examine a decisive fact discussed by the parties.

Law stated - 31 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

With the EU judicial space, European Regulation No. 1215/2012 (the Regulation) sets the procedure for the recognition and enforcement of decisions in civil and commercial matters. A decision enforceable in the originating EU member state will be directly enforceable in other EU member states.

Italy is also a party to the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to the Hague Choice of Courts Convention of 30 June 2005 and to the Hague Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters. Italy is also a part of several bilateral conventions applicable to the enforcement of judgments.

In the absence of an applicable EU regulations or international treaties, the recognition and enforcement of foreign judgments are governed by Law No. 218/1995. Under article 64, a foreign judgment is automatically recognised if, among other things:

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the foreign court had proper jurisdiction; the defendant was properly served with the writ of summons; the parties appeared in court in accordance with the law of the place where the trial took place; the judgment is final; the judgment does not conflict with any Italian final judgment; no proceedings are pending in Italy between the same parties and in connection with the same subject matter; and

- it does not contain provisions against public policy.

Law stated - 31 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Italy is a member of the EU, thus Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters applies. Italy is also a party to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

In the absence of an applicable EU Regulation or international convention, articles 69 and 70 of Law No. 218 of 31 May 1995 apply. Article 69 sets the procedure for the taking of evidence (witness examination, technical assessments, etc) requested by foreign authorities, and article 70 specifically addresses the case of requests made through diplomatic channels.

Law stated - 31 May 2025

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

While Italian arbitration law is not based on the UNCITRAL Model Law, it is still consistent with most of the principles of the Model Law.

Law stated - 31 May 2025

Arbitration agreements

- 26** | What are the formal requirements for an enforceable arbitration agreement?

To be enforceable, the arbitration agreement must be in writing (including email, fax, telegraph or fax) and must include the subject matter of the dispute. Article 807 Code of Civil Procedure (CCP) also requires the parties to select the number of arbitrators and the criteria for the appointment.

Law stated - 31 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement does not specify the number of arbitrators and the parties cannot agree on the matter, there shall be three arbitrators. If the parties have not otherwise agreed, the president of the tribunal at the seat of the arbitration provides for the appointment, upon a party's request.

Parties can challenge the appointment of arbitrators on the grounds listed under article 815 CCP (ie, (1) the arbitrator does not have the requirements expressly agreed by the parties; (2) in the case of conflict of interests, according to the terms set under article 815 paragraph 1 CCP). This provision has been recently amended to include – as a ground for challenge – the existence of 'serious reasons of convenience' that could prejudice the independence or the impartiality of the arbitrator.

Law stated - 31 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

The selection of arbitrators must follow the procedure and criteria set out in the arbitration agreement. Where the arbitration agreement does not provide guidance or the relevant mechanism fails, the interested party may request the intervention of the President of the Tribunal at the seat of arbitration. The tribunal shall select the arbitrators based on criteria ensuring transparency, turnover and efficiency. These appointments are published on the court's website, to ensure transparency.

Key factors for selecting arbitrators are independence, impartiality, experience, subject-matter expertise and case management skills.

Law stated - 31 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitral tribunal must comply with the rules set out by the parties in the arbitration agreement. Otherwise, under Italian law it has broad discretion in conducting the procedure, provided that it ensures due process and grants the parties a reasonable and

equal opportunity to be heard. Under article 816-bis CCP, the arbitral tribunal has the power to govern hearings as it deems appropriate (including remotely).

Law stated - 31 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

If the parties have not granted arbitrators the power to issue interim measures (or, if they have, before the constitution of the arbitral tribunal), national courts can issue a wide range of interim measures in support of arbitration. Moreover, national courts are competent for the challenge and the enforcement of interim measures granted by arbitrators, and this competence cannot be excluded by the parties' agreement. Additionally, a national court may be involved in appointing arbitrators if the arbitration agreement does not address the appointment process or the relevant mechanism fails.

Law stated - 31 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Legislative Decree No. 149/2022 introduced an entirely new discipline on arbitral interim measures. The amended article 818 CCP allows the parties – through the arbitration agreement, by reference to arbitration rules, or in a separate written agreement prior to the commencement of the proceedings – to grant the arbitrators the power to issue interim measures. Once the arbitral tribunal is constituted (or the sole arbitrator accepts the appointment), state courts are no longer competent to issue interim measures in support of the arbitration (thus, state courts remain the appropriate venue where a party seeks interim protection before the tribunal is constituted or the sole arbitrator accepts the appointment).

Arbitration law does not specify the type of interim measures arbitrators can issue, allowing them to adopt a wide range of measures, including those for preserving assets or documents, but state courts support is required at the enforcement stage.

Law stated - 31 May 2025

Award

32 | When and in what form must the award be delivered?

The award must be made in writing within the deadline set in the arbitration agreement (or under the applicable arbitration rules chosen by the parties). If no term is agreed upon,

the 240-day term set under the CCP applies (thought it can be suspended in certain circumstances, including by the parties' consent or where evidence needs to be taken).

Law stated - 31 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An award can be set aside on the following grounds, set out under article 829, paragraph 1, CCP:

- the arbitration agreement was invalid;
- the arbitrators were not appointed in compliance with the provisions of the CCP, where such a violation has been objected to during the arbitration;
- the award was rendered by an arbitrator lacking legal capacity;
- the award exceeds the scope of the arbitration agreement;
- the award does not set out the reasons of the decision, or does not contain the ruling, or it is not signed;
- the award was rendered once the time limit set by article 820 CCP was already expired;
- the requirements set by the parties under express sanction of nullity have not been complied with, and the relevant nullity has not been cured;
- the award is conflicting with previous final award or a previous final court judgment, provided that such an award or judgment has been filed during the proceedings; violations of due process;
- the award does not resolve on the merits of the dispute, where the arbitrators were required to decide the merits; the award contains contradictory decisions;
- the award does not decide some of the claims or objections raised by the parties in compliance with the arbitration agreement; and
- the award is in breach of public policy.

Further exceptional remedies are available, that is, revocation (for fraud, forgery of evidence or decisive evidence concealed by a party) and third-party opposition (where the award prejudices a third party, or where the award is the result of wilful misconduct or fraudulent collusion to the prejudice of a creditor or assignee of one of the parties of the arbitration).

Law stated - 31 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

For domestic awards, the procedure is outlined in article 825 CCP. The party seeking enforcement must file a request with the court of first instance (Tribunals) at the seat of arbitration, along with certified copies of the award and the arbitration agreement. If the formal requirements are met, the court will declare the award enforceable without reviewing the merits of the dispute.

For foreign awards, the relevant request (together with certified copies of the award and the arbitration agreement, if necessary, translated into Italian) is filed before the president of the Court of Appeal where the other party resides (in the case of a party non-resident in Italy, before the Court of Appeal of Rome). The President of the Court of Appeal declares the award immediately enforceable once it is ascertained that the formal requirements of the award are met, the dispute is arbitrable under Italian law and the award is not in breach of public policy.

The enforceability decree can be challenged before the Court of Appeal (with no automatic stay of the enforceability). Italy is a party to the New York Convention; therefore, an award can be challenged based on the grounds set under article V of the New York Convention.

Law stated - 31 May 2025

Costs

35 | Can a successful party recover its costs?

Yes, it can, but there is no specific provision in arbitration law addressing cost allocation. The parties may establish a rule in the arbitration agreement. Lacking such a rule (as frequently happens), arbitrators typically apply the same principles as in court proceedings, where the losing party bears the costs. However, arbitrators may consider the specific circumstances of the case (cross-claims, the behaviour of the parties, etc) and adapt their decision accordingly. The decision on costs covers arbitrators' fees (and institutional administrative fees, where applicable), legal fees and the costs for experts, interpreters, etc. There are no provisions specifically addressing the recoverability of litigation funding costs, which is becoming more common in various jurisdictions. Arbitrators may consider the relevant requests based on the circumstances of the case and the rules applicable to the proceedings.

Law stated - 31 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The most common ADR process is arbitration. Mediation and assisted negotiation (ie, a negotiation with the mandatory assistance of lawyers) are also becoming more popular,

because they are mandatory in certain cases, and they are cost-efficient (especially for small disputes), flexible, fast and confidential.

Law stated - 31 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Mediation and assisted negotiation are, in certain cases, required for a claim to be admissible before state courts. The mandatory mediation attempt applies to specific matters, including lease agreements, loans, family agreements, insurance, medical malpractice, joint venture, inheritance, supply of goods and franchising. Mandatory assisted negotiation is required for claims for damages caused by vehicle or boat accidents, as well as claims for payments up to €50,000.

The judge must ascertain that the parties properly participated to the mandatory mediation or negotiated composition. If they have not, the judge shall compel the claimant to activate the relevant procedure, or the court would dismiss the claim. The court may also invite the parties to attempt mediation in non-mandatory cases, if it believes an amicable settlement is possible or advisable.

In arbitration, other ADR mechanisms are not required unless specified by the arbitration clause.

Law stated - 31 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Reforms over the years have introduced the 'simplified procedure', currently set forth by article 281-decies CCP. The latest reform, the 2022 Cartabia Reform, tries to leverage it as an equivalent to the motion practice, in the attempt to address the courts backlog. It shapes it as focused on written submissions and fewer hearings, being applicable when the facts of the case are not in dispute, or the claim is based on documentary evidence or does only require very limited and straightforward evidence collection.

Law stated - 31 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The major development is linked to the implementation of the Cartabia reform, named after former Italian Minister of Justice Marta Cartabia. The reform came into effect on 1 March 2023 and it is still undergoing adjustments: the last Correttivo Cartabia was approved on 11 November 2024 (and, for mediation only, on 27 December 2024). The reform strengthens alternative dispute resolution (ADR) systems, further improving arbitration law (see [here](#)) and making mediation compulsory for disputes up to €50,000; simplifies and streamlines procedures and modifies all the procedural deadlines, setting a more concentrated flow for standard litigation procedures, with the potential to substitute hearings with written filings; introduces a standard procedure for cases related to personal status, minors and families, and establishes a single court for such disputes; and introduces new rules for asset attachment.

Significant changes will soon be implemented in connection with product liability cases. The New EU Directive on Liability for Defective Products (New PLD) came into force on 8 December 2024, and member states have until 9 December 2026, to implement it. The New PLD therefore pursues two main policy objectives: (1) adapting the PLD to the digital age and the circular economy; and (2) reducing obstacles to making claims and to getting compensation (burden of proof and discovery provisions). Additional details are available [here](#).

Also, Legislative Decree No. 28/2023 has introduced [Representative Actions](#) into the Consumer Code, allowing consumers to seek collective redress against professionals who fail to comply with consumer protection laws.

Law stated - 31 May 2025

**McDermott
Will & Emery**

Fabio Cozzi
Stefano Mechelli
Giulio Marconcini
Arcangela Gerbino

fcozzi@mwe.com
smechelli@mwe.com
gmarconcini@mwe.com
agerbino@mwe.com

McDermott Will & Emery

Read more from this firm on Lexology

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[Sam Williams](#), [Lara von Wildenrath](#)

[Appleby](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Petty Debts Court is the lowest court in Jersey. It hears civil claims of up to £30,000 in value (net of interest) and tenancy matters where the annual rent does not exceed £45,000. It comprises the Civil Claims Division, the Tenancy Division and the Family Division, which determines proceedings in relation to separation and maintenance orders, including enforcement. The Petty Debts Court is presided over by a single judge, the Magistrate or Assistant Magistrate.

For civil matters exceeding the jurisdiction of the Petty Debts Court, the first instance court is the Royal Court that also hears appeals from the Petty Debts Court. There are four divisions of the Royal Court: the Héritage Division, the Family Division, the Probate and Protection Division and the Samedi Division.

- The Héritage Division determines matters relating to immovable property, including boundary disputes, and has jurisdiction over contract leases for a period of 10 years or more.
- The Family Division has jurisdiction in respect of divorce and separation matters, ancillary relief proceedings, adoptions, legitimacy and child protection matters.
- The Probate and Protection division has jurisdiction in respect of wills and succession matters, lasting powers of attorney, capacity issues including appointments and supervision of delegates, and guardians of minors (tuteurs).
- The Samedi Division has jurisdiction over all other civil matters, including judicial review and administrative appeals.

The Royal Court in civil matters consists of a judge and two jurats, constituting what is known as the 'Inferior Number'. The head of the judiciary is the Bailiff and there is also a Deputy Bailiff and a number of part time Commissioners acting as judges. The jurats are lay members of the court and are appointed to the role on the basis of their expertise and experience. In addition, the Master of the Royal Court exercises delegated powers in respect of case management decisions and other interlocutory applications, including summary judgment. The Family Division has two permanent Registrars and a number of Family Proceedings Officers acting with broad delegated authority as a form of lower court.

There is generally an automatic right of appeal from the Royal Court to the Court of Appeal save where the judgment or order under appeal is interlocutory or relates to case management or costs, in which case leave is required either from the first instance court or from the Court of Appeal itself, either sitting as a single judge of appeal or the full court.

The Judicial Committee of the Privy Council in London hears appeals from decisions from the Court of Appeal (and, in rare cases, direct appeals). Such appeals require leave from the Court of Appeal or from the Judicial Committee itself. In either case, the test is that the appeal raises an arguable point of law of general public importance that ought to be considered at that time.

Law stated - 12 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The Petty Debts Court is intended to be an accessible and relatively informal court for members of the public with self-representation and therefore, in practice, the magistrate may adopt a more inquisitorial role than would usually be expected in civil proceedings.

Litigation proceedings in the Royal Court are adversarial in nature. As set out in the [Royal Court \(Jersey\) Law 1948](#), the jurats will determine factual matters and assess damages. The role of the judge is to determine issues of law and procedure, including costs, although, where the two jurats are divided in their decision, the judge may exercise a casting vote.

Law stated - 12 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods are referred to as 'prescription periods' in Jersey Law. There is no statute in Jersey that governs all prescription periods; however, by way of example, the following periods have been distilled from case law and statute:

- 10 years from the date of breach for a claim for breach of contract;
- three years from the date on which the cause of action accrued for any action founded on tort;
- three years for a breach of trust action by a beneficiary against a trustee, from the date of delivery of final accounts to the beneficiary or the date of first knowledge of the breach, whichever is earlier; and
- a year and a day of the date of death for an action to annul or challenge a will of immovable or movable property.

The parties to a claim may agree to a standstill or similar agreement in order to extend or suspend the running of time for the purposes of a prescription period. Prescription periods may also be interrupted or mitigated by incapacity, being a minor or circumstances giving rise to 'practical impossibility'.

Law stated - 12 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In all civil proceedings save for applications for injunctive relief, applications for directions pursuant to the Trusts (Jersey) Law 1984 (as amended), administrative appeals and judicial review, the claimant is required to address correspondence prior to the issuing of proceedings to the other parties.

This is to encourage the exchange of material information about a legal action being considered by a party and to allow parties an opportunity to settle a claim before the commencement of proceedings. If a party fails to issue the appropriate pre-action communication, that party could be liable for a costs order.

Pre-action disclosure orders are generally only available in relation to claims in respect of personal injury or death. However, other forms of relief may be available to obtain information and documents where there is evidence of wrongdoing including *Norwich Pharmacal* orders, search orders and disclosure orders ancillary to freezing orders.

Law stated - 12 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Legal proceedings in Jersey must be instituted by way of a representation or an action by an order of justice or an action by summons.

An Order of Justice initiating a complex action requires personal service by the intermediary of the Viscount's Department (a branch of the court) on a defendant within the jurisdiction, who will be summoned to appear at the Royal Court to indicate whether they are defending the action (or default judgment may be given). Following service, the plaintiff is responsible for filing the requisite papers with the court's administrative arm, the Judicial Greffe, ahead of the date on which the defendant has been summoned to appear.

Representation proceedings (for example, for matters relating to the administration of trusts) are commenced by filing a pleading and affidavit evidence with the Bailiff's chambers and by attending an *ex parte* hearing at which orders will be made for convening and service. The representor (applicant) will then be responsible for service on the respondent by way of ordinary service, which may include service by post or email.

It is necessary to apply for permission to serve proceedings on parties out of the jurisdiction. This will usually be dealt with on the papers and the court will specify the form of service required, which may differ depending on the particular party and their place of residence. Orders for substituted service may be available.

There are currently no delays in commencing proceedings at the Jersey Royal Court and generally good capacity for hearing claims.

In each instance, a fee must be paid to the court to commence proceedings, as well as for personal service by the Viscount's Department. The amount of the fee depends on the quantum and nature of the claim.

Law stated - 12 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Proceedings commenced by representation are flexible in terms of procedure and timetable. Where the parties are unable to agree on a timetable, this may be determined by the court at a directions hearing. Relief may be granted at the first *ex parte* hearing where it is purely administrative, uncontentious and there are no affected third parties. At the other end of the spectrum, representation proceedings may take a number of months or over a year to resolve through exchanges of evidence and a substantive final hearing.

Where proceedings are commenced by summons for a debt or liquidated claim and are defended, the claim is placed on the pending list and the plaintiff must file particulars of claim within 21 days. The defendant then has a further 21 days to file an answer (defence pleading).

Where an action by way of order of justice is defended and placed on the pending list, the defendant has 21 days to file an answer (and counterclaim). The plaintiff may then file a reply (and answer to counterclaim) after a further 21 days and the defendant may file a rejoinder to the answer to counterclaim after a further 21 days.

Thereafter, the pleadings will close and the parties will attend a directions hearing to determine a procedural timetable leading to a trial of the action. This will typically involve discovery, exchange of factual and expert evidence and the filing of skeleton arguments for the trial. A relatively straightforward case may reach trial within 12–18 months from commencement.

Law stated - 12 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

A party's appearance in proceedings is not treated as a waiver of any irregularity in the proceedings, service or any order giving leave to serve the proceedings out of the jurisdiction. A party can challenge the court's jurisdiction by making an application by way of a summons and supporting affidavit and can be brought on a number of grounds including lack of jurisdiction, inappropriate forum or non-compliance with service requirements.

Law stated - 12 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The procedure in representation proceedings is flexible and directions may be agreed between the parties or otherwise determined at a directions hearing.

The procedure and timetable for actions commenced by way of order of justice is more prescriptive and is, in part, set out in the Royal Court Rules, 2004. After close of pleadings, or otherwise at the expiry of three months of the matter being placed on the pending list, the court will set a date for a directions hearing before the Master at which a timetable will be set down up to and including the trial.

The court has a duty to actively manage cases in order to further the overriding objective in proceedings to deal with cases justly and at proportionate cost.

The parties may seek to vary or extend time limits and deadlines by agreement or by application to the court.

Law stated - 12 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

As soon as a party is aware that litigation is contemplated, that party must immediately take all reasonable steps to ensure that potentially discoverable documents are preserved.

Orders for discovery and inspection of documents are standard in an action commenced by order of justice. Such orders are less typical and at the court's discretion in representation proceedings.

Where ordered, parties must provide discovery by way of a list on sworn affidavit of all documents in their possession, custody or power relating to any matter in question in the proceedings. 'Documents' includes both physical documents and materials as well as electronic data, documents and information. Relevance for this purpose is assessed with reference to the issues disputed in the parties' pleadings.

A relevant document will be discoverable where it contains information that may either directly or indirectly enable an opponent to advance their case or harm the case of the party giving discovery, or which may fairly lead to a train of enquiry that may have either of those consequences.

A party has a right to inspect a copy of a relevant document unless a specific objection is raised, such as privilege. The obligation to provide discovery is an ongoing one.

Law stated - 12 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

A party to court proceedings has the right to withhold documents from discovery on the basis that the documents are confidential and privileged (but not solely on the basis of confidentiality). The following categories of privilege may be available depending on the circumstances in which a communication has been made or document generated:

- legal advice privilege, which applies to confidential communications between a lawyer acting in a professional capacity and a client produced for the dominant purpose of seeking or giving legal advice;
- litigation privilege, which applies to communications or materials made or generated after litigation has commenced or is in reasonable contemplation, for the sole or dominant purpose of such litigation. Such communications may be between a lawyer and client for the seeking and giving of advice or a lawyer and a third party such as a witness or expert where the purpose is to obtain evidence or information for the proceedings; and
- without prejudice privilege, which applies to communications made in good faith for the purposes of settlement between the parties.

Legal advice provided by an in-house lawyer acting in the capacity or function of a lawyer, whether foreign or locally qualified, would potentially be protected by legal advice privilege, depending on the precise circumstances.

Law stated - 12 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Any evidence-in-chief to be adduced by a party will be included in written witness statements that the parties will serve on each other ahead of the trial. The timeline for the service of witness statements is usually determined by directions given by the Court.

The court may provide leave for the parties to adduce expert evidence on issues where the court would require assistance, such as matters of foreign law or medical or technical matters, and the expert will provide an independent report to the court. The experts for the parties are usually expected to meet and to produce a joint statement of areas of agreement and disagreement in advance of trial.

Law stated - 12 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Generally, any fact required to be provided at the hearing of any proceedings by the evidence of witnesses shall be provided by the examination of the witnesses orally in open court. In practice, an affidavit or witness statement will be admitted as evidence-in-chief and the witness will then be subject to cross-examination and potentially re-examination.

Experts may also be called to give oral evidence and subjected to cross-examination on their reports.

Law stated - 12 May 2025

Interim remedies

13 | What interim remedies are available?

The court has an inherent jurisdiction to make a wide variety of interim orders at its discretion, both in support of proceedings in the jurisdiction or proceedings overseas, and in aid of enforcement and execution of foreign judgments and arbitral awards.

Interim remedies available to preserve assets would include freezing orders (which may extend to worldwide assets), *arrêts* (attachment orders) or *arrêts entre mains* (attachment of third-party debts). These may be ordered against both defendants and local financial institutions, such as banks or trust companies, and will often be accompanied by ancillary disclosure orders.

Search orders and Norwich Pharmacal disclosure orders are also available.

Law stated - 12 May 2025

Remedies

14 | What substantive remedies are available?

The court may order a wide array of remedies following trial or substantive hearing. These may include awards of damages, declaratory relief, specific performance, permanent injunctions, equitable compensation and restitutionary orders. In complex cases, the court may give judgment on liability and then order a separate trial of quantum, or an inquiry as to damages.

An award of damages is generally compensatory and punitive or exemplary damages are not available except in exceptional circumstances.

Every judgment debt (including a money judgment) carries simple interest at such a rate as the court thinks fit from the date of the judgment until such later date. Simple interest will cease on the date that the judgment debt is satisfied.

Law stated - 12 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Settlement discussions are encouraged and the court is able to order a stay of proceedings for alternative dispute resolution. However, the content of settlement discussions, including any mediation process, will normally be confidential and subject to without prejudice privilege.

Where a stay has been ordered by the court, it is usually expected or ordered that the parties report back to the court on the outcome in order to inform case management but this does not undermine the confidentiality of the discussions themselves. When agreement on a compromise is reached, the parties may, however, choose to embody the settlement terms in the form of a court order or to append a settlement agreement so that it may be enforced while otherwise staying the proceedings (ie, a Tomlin order).

Law stated - 12 May 2025

Enforcement

16 | What means of enforcement are available?

Where the Royal Court gives judgment for a payment of a sum of money, this generally authorises the plaintiff to have the defendant's movable property in Jersey distrained on (ie, seized by the Viscount's department (the court's executive arm) and sold).

Where an *arrêt* or *arrêt entre mains* has been granted over movable property on an interim basis this amounts to an in rem right or proprietary interest in the asset. When such orders are confirmed by the court, the plaintiff or judgment creditor acquires title.

Where a judgment debtor has immovable property in Jersey, a judgment creditor must bring a separate application by representation that leads to a declaration that the property has been renounced and culminates in an order for *dégrèvement*, appropriating title subject to satisfaction of priority claims and costs.

Where court orders are disobeyed, it is possible to refer the matter to the court for sanctions for contempt by means of a committal application. Sanctions are at the discretion of the court but may include a fine or imprisonment.

Law stated - 12 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

All court hearings are held in public except for certain matters that are ordered to be held in private or are, by their nature, private. By way of example, this would typically include proceedings involving children in the Family Division or representation proceedings that concern the administration of trusts. Court documents from public proceedings are available on request supported with reasons and on payment of a fee.

Law stated - 12 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

A successful party can generally recover their legal costs and expenses from the losing party subject to such costs being reasonably incurred and reasonable in quantum, whether in respect of a specific hearing, issue or the action as a whole. The court retains a discretion as to the form of costs order and the basis on which to order costs, which may be the standard basis or, where a party's conduct has been unreasonable, on the more favourable indemnity basis. Some proportion of costs incurred will, however, likely remain irrecoverable.

Parties may protect their cost position by making a payment into court or through the making of offers to settle, compliant with the requirements of the relevant practice direction.

A defendant may also seek an order for security for costs against a plaintiff. The court will take into account all relevant circumstances in exercising its discretion as to whether to grant security and in what form and amount, including the balance of injustice and whether a genuine claim will be stifled. The fact that a plaintiff is outside the jurisdiction is not a sufficient ground for security being ordered, but where there are proven difficulties in enforcing a costs order in the overseas jurisdiction, security for any additional enforcement costs may be ordered.

Law stated - 12 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Conditional fee agreements with an uplift for the lawyer on a successful outcome are unlawful in Jersey. However, such an agreement is lawful so long as the law firm in question charges their normal standard hourly rates with no uplift on a successful outcome.

Third-party funding may be available to parties in litigation and funders may be permitted to retain a share of damages or compensation awarded. Commercial funders will usually be expected to meet adverse costs orders and not to exert control over the proceedings. Even where funding agreements are unenforceable as being contrary to public policy on the grounds of champerty or maintenance, commercial funders may be liable to meet third-party costs orders.

Law stated - 12 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Insurance is available to cover all or part of a party's legal costs. Where possible, insurance should be in place before proceedings commence.

Law stated - 12 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Litigants may bring a class action in Jersey. There is no standard procedure for class actions.

Law stated - 12 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal against an order of the Royal Court is usually brought on the grounds that the court erred in law, fact or in the exercise of its discretion. Permission to appeal may be required as, for example, for appeals of interlocutory decisions and costs orders.

Proceedings heard in the Court of Appeal may be appealed further to the Privy Council; however, this is subject to leave to appeal.

Law stated - 12 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The Judgments (Reciprocal Enforcement) (Jersey) Law 1960 as amended provides for the registration and execution in Jersey of certain foreign judgments. This is, however, limited to judgments for a monetary sum given in the superior courts of countries that give reciprocal treatment to judgments given in Jersey. These countries include: England and Wales; Scotland; Northern Ireland; Isle of Man; and Guernsey.

If a judgment debt does not emanate from a specified court from a listed country then the judgment creditor would need to enforce by starting fresh proceedings in Jersey, suing on the original foreign judgment.

Judgments of foreign courts for non-monetary sums, such as declaratory relief, may be recognised in proceedings before the Jersey courts in appropriate circumstances.

Law stated - 12 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The Service of Process and Taking of Evidence (Jersey) Law 1960 as amended provides that an application may be made to the Royal Court for an order that evidence be obtained in Jersey if the Court is satisfied that the application is made in pursuance of a request issued by a court or tribunal exercising jurisdiction in a country or territory outside Jersey and that the evidence to which the application relates is to be obtained for the purposes of civil proceedings before that court where the proceedings have been instituted or are contemplated. The court has the power to make a wide variety of orders to give effect to a request, including to make provision for the examination of witnesses, either orally or in writing, or for the production of documents.

Law stated - 12 May 2025

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

The provisions of the Arbitration (Jersey) Law 1998 govern and regulate arbitrations. The statute is not based on the UNCITRAL Model Law but rather on the United Kingdom Arbitration Acts 1950–1982.

Law stated - 12 May 2025

Arbitration agreements

- 26** | What are the formal requirements for an enforceable arbitration agreement?

An 'arbitration agreement' is defined in the Arbitration (Jersey) Law 1998 as a written agreement to submit present or future differences to arbitration, whether an arbitrator is mentioned therein or not. An arbitration agreement must therefore be in writing and sufficiently certain but does not require other formalities to be valid.

Law stated - 12 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Unless a contrary intention is expressed in an agreement, every arbitration agreement shall be deemed to include a provision that there is reference to a single arbitrator. The arbitrator is chosen by the parties or, failing agreement, by the court on application. An appointment of an arbitrator may be set aside in limited circumstances.

Law stated - 12 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

There is no formal list of potential candidates to act as arbitrators in Jersey. There is a limited pool of locally qualified arbitrators and, in practice, arbitrators from the UK are frequently appointed.

Law stated - 12 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

Generally, the written arbitration agreement between the parties would contain the arbitration procedure to be followed by the parties. However, if the arbitration agreement is silent on the procedure, article 11 of the Arbitration (Jersey) Law 1998 deems the agreement to contain certain provisions including:

- the manner in which witnesses are to give evidence; and
- the documents that witnesses would be required to produce.

Law stated - 12 May 2025

Court powers to support the arbitral process

- 30** | What powers do national courts have to support the arbitral process before and during an arbitration?

The court has the same power as it would in a civil action to make orders to issue a request for the examination of witnesses outside of Jersey and to make orders regarding matters of

procedure and other incidental matters. The court may also determine a preliminary point of law with the consent of the arbitrator or the parties.

Law stated - 12 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Arbitrators do not have statutory powers to grant interim relief, which should instead be sought from the court.

Law stated - 12 May 2025

Award

32 | When and in what form must the award be delivered?

Under article 12 of the Arbitration (Jersey) Law 1998, an arbitration award may be made at any time. Arbitrators may also be deemed able to make interim awards. Where a time period is limited for the making of an award, the court may order an extension of time for the making of the award.

Law stated - 12 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An arbitration award can be appealed on a question of law arising out of the award. The decision of the court can further be appealed so long as the court or the Court of Appeal has granted leave to do so and the lower court has certified that the question of law is one of general public importance or one that, for some other special reason, should be considered by the Court of Appeal.

If an arbitration award is taken on appeal to the Royal Court on a question of law, the court may confirm, vary or set aside the award or remit the award to the reconsideration of the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

Law stated - 12 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

A domestic arbitration award may be enforced (by leave of the court on an *ex parte* basis) in the same manner as a judgment or order to the same effect.

A foreign arbitration award made pursuant to the Protocol on Arbitration Clauses, 24 September 1923, the Geneva Convention on Foreign Arbitral Awards, 26 September 1927 and the New York Convention, 10 June 1958 may be enforced by action (Order of Justice) or in the same manner as a domestic award (by *ex parte* representation).

Law stated - 12 May 2025

Costs

35 | Can a successful party recover its costs?

Unless an arbitration agreement specifies otherwise, every arbitration agreement will be deemed to include a provision that the costs of the reference to arbitration and award shall be in the discretion of the arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid. The arbitrator may tax or settle the amount of costs to be so paid. Any such costs will form part of the award.

Law stated - 12 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative dispute resolution (ADR) in Jersey could encompass negotiation, expert determination, mediation and arbitration.

Mediation is a popular choice of ADR given its cost-effective nature in potentially reaching a settlement of the proceedings.

The Royal Court Rules allow for a stay of court proceedings in order to settle those proceedings. This applies to all forms of ADR.

Law stated - 12 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

The court, of its own motion, may order a stay for the purposes of the parties reaching settlement. There is, however, no stipulation that the parties are compelled to undertake an ADR process.

Law stated - 12 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Jersey is a mixed legal system derived primarily from customary law, civil law, English law and development of law by the modern Jersey courts and statute.

Law stated - 12 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

There are currently no proposals for dispute resolution reform.

Law stated - 12 May 2025

APPLEBY

Sam Williams
Lara von Wildenrath

swilliams@applebyglobal.com
LvonWildenrath@applebyglobal.com

[Appleby](#)

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Lebanon

[Carlos Abou Jaoude](#), [Rania Khoury](#), [Yasmina El Hitti](#)

[Abou Jaoude & Associates Law Firm](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Lebanese civil judiciary is organised as a three-tier hierarchy pursuant to article 83 of the Lebanese Code of Civil Procedure (LCCP). The judiciary is composed of:

- Courts of First Instance geographically distributed at the district level;
- Courts of Appeal operating at the governorate level;
- The Court of Cassation, seated in Beirut, functioning as the highest court of ordinary jurisdiction.

At the first tier, Courts of First Instance, are subdivided into single-judge sections, which adjudicate low-value civil and commercial claims (currently set at claims not exceeding 5 billion Lebanese pounds, urgent proceedings (under the jurisdiction of the Summary Affairs Judge also known as Urgent Matters Judge), personal status matters (excluding nationality), lease disputes, enforcement matters and similar matters expressly assigned by law; and three-judge chambers for the other civil and commercial disputes.

At the second tier, Courts of Appeals, sit in panels of three judges and exercise full jurisdiction over both fact and law. They hear appeals against judgments rendered by the Courts of First Instance in civil and commercial matters, and decisions issued by Enforcement Bureaux, special committees, or councils in the instances expressly provided for by law.

The Courts of Appeal also act as a court of first instance for petitions for the recusal of judges and other applications explicitly referred to them by statute.

At the third tier, the Court of Cassation is composed of multiple civil and chambers, each presided over by a president and two counsellors. It exercises review solely on matters of law, and its jurisdiction includes applications to quash or uphold final judgments rendered by the Courts of Appeal in civil and commercial cases, applications for transfer of a case from one court to another, and any other application conferred upon it by law.

Although Lebanon does not have a separate, standalone commercial or financial court, subject-matter specialisation is achieved through dedicated chambers within the ordinary judiciary. These include chambers specifically handling commercial disputes, bankruptcy, real estate or personal status issues. On a different note, employment matters are reviewed by Labor Arbitral Councils (or Employment Courts) within the civil court system.

Law stated - 30 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Civil proceedings are judge-led; there is no jury system in Lebanon. While the system is adversarial, judges are responsible for managing the proceedings and issuing judgments. Among other prerogatives, as part of their procedural role, they ensure the efficiency of the process, uphold the parties' right to due process, encourage amicable settlement and establish the case timetable. Judges can also admit or refuse evidence, issue preliminary decisions, appoint experts and hear and interrogate witnesses.

Law stated - 30 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

In Lebanon, the time limits for bringing civil claims, known as statutes of limitations, are primarily governed by the Lebanese Code of Obligations and Contracts (COC).

The general and default limitation period for contractual and tortious claims is 10 years, while specific types of claims are subject to shorter periods. Below are non-exhaustive examples of the latter.

The claims with the following objects are subject to a five-year limitation:

- arrears;
- interests;
- dividends;
- rentals;
- obligations payable per year or per shorter periods;
- shareholder or partner disputes; and
- disputes of shareholders or partners with third parties when these disputes arise from the company's bylaws.

Similarly, many specific claims are subject to a two-year limitation, including but not limited to:

- the claim of merchants, suppliers, manufacturers by reason of the products they provide;
- the claims of school teachers, professors, masters of public or private boarding-with regard to the fees owed to them by their students, as well as with regard to the supplies provided to them students, starting from the date fixed for the payment of their fees;
- the claim of physicians, surgeons, midwives, dentists and veterinaries for the fees owed by their patients in relation to visits, surgeries, supplies and costs incurred, starting from the last medical consultation or surgery;
- the claim of pharmacists for the medicines they have provided, starting from the date they have been provided;
-

the claim of attorneys for their fees and expenses, starting from the date of the final judgment or the revocation of the mandate granted to them;

- the claim of architects, engineers, experts and surveyors for their estimates, services and expenses incurred, starting from the day the estimate was submitted, the services rendered or the expenses made;
- the claim of intermediaries for the payment of their brokerage fees, starting from the conclusion of the deal; and
- insurance claims.

Additionally, in sales contracts, claims arising from redhibitory defects or from the absence of promised qualities must be brought within 365 days from the date of delivery for immovable property, and within 30 days from the date of delivery for movable goods and animals. These time limits may be extended or shortened by mutual agreement between the parties.

Finally, it is important to know that the statute of limitations can be interrupted by:

- any judicial or extra-judicial demand, bearing a certain date, which places the debtor in default of performing their obligation, even if brought before an incompetent judge or if the act is declared null due to a formal defect;
- a request for admission of the claim in the debtor's bankruptcy;
- any conservatory act undertaken on the debtor's property, or by any petition seeking authorisation to carry out such an act; and
- the debtor's acknowledgment of the creditor's right.

Law stated - 30 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

There is one formal pre-action consideration that claimants must bear in mind, notably because the parties are encouraged to attempt amicable settlement before initiating proceedings.

In fact, a creditor must generally issue a written formal notice (*mise en demeure*) to place the debtor in default, which is a prerequisite for claiming damages. This notice may take various written forms, including a registered letter with acknowledgment of receipt, or judicial summons, even if brought before an incompetent court. Issuing such notice preserves the creditor's rights, interrupts the time limit period and triggers the accrual of legal interest.

However, under article 258 of the COC, formal notice is unnecessary in specific situations: when performance has become impossible; when the obligation was subject to a term that has now lapsed and was inserted to the debtor's benefit; or when the debtor must return a good they know to have been stolen or wrongfully received. In such cases, the debtor is *ipso jure* placed in default.

This formal notice remains mandatory in some cases, such as for insurance claims and enforcement matters.

Law stated - 30 May 2025

Starting proceedings

- 5** | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings in Lebanon are initiated by filing a statement of claim with the clerk of the competent court. This document must include: the name of the court, the identities and addresses of the parties, their legal representatives (if any), the name and identity of the claimant's lawyer, the power of attorney, a clear presentation of the facts, the legal grounds, the relief sought and the list of attached supporting documents.

The statement of claim must be submitted with as many signed copies as there are defendants, each accompanied by certified copies of the supporting documents. Upon payment of the required court fees, the claim is registered and stamped with a reference number and filing date. The court clerk then creates a formal case file containing all documents.

Except for specific cases provided by law (eg, the Lebanese state, entities and defendants residing abroad), the defendant is in principle served with the statement of claim in person, at their residence, domicile, work premises, or any other place where they are located, and must respond within 15 days of notification. If they are not represented by a lawyer, they are required to elect a domicile within the court's jurisdiction. However, in practice, if a party fails to elect said domicile within the court's jurisdiction, courts usually serve the documents to the latter at their residence.

Upon representation by a lawyer, all documents may be served to the parties' respective lawyers, notwithstanding the location of the lawyer's office.

In the past five years, Lebanese courts have experienced significant administrative and structural challenges. These included delays stemming from prolonged strikes (initiated by the judiciary, the Beirut Bar Association and public sector employees), covid-19 pandemic, staffing shortages, the economic and financial crises, which severely eroded the value of the judges' salaries and froze their bank savings, and the impact of the recent war. These factors substantially reduced the capacity of the courts to handle their caseload. However, with the election of a new President and the formation of a new Government, the judiciary is gradually regaining stability, and the administration of justice is steadily improving.

As for the fees for issuing a claim, they vary depending on the value and nature of the claim and are generally partially payable in advance. These include judicial stamp duties, lump sum or proportional court fees and other procedural costs (eg, Beirut or Tripoli Bar Association stamp duties, court clerk fees and notification fees).

When applicable, the proportional court fees rate is 2.5 per cent of the value of the dispute, only a quarter of which is paid upon submission of the statement of claim, and the remaining

amount is payable upon the issuance of the final court decision. An additional 20 per cent of said rate of 2.5 per cent is also paid upon submission of the statement of claim, representing the magistrate pension fund fees.

Specific lawsuits provided in the Court Fees Law (eg, summary affairs, lease lawsuits and annulment recourse of an arbitral award) are subject to a lump sum fee amounting to 250,000 Lebanese pounds upon submission of the statement of claim.

Law stated - 30 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Civil procedure in Lebanon follows a structured and codified timetable. Once a statement of claim is filed and formally served on the defendant, the latter must submit a statement of defence within 15 days of notification.

The claimant then has 10 days to submit a reply to the defendant's defence, after which the defendant may, in turn, file a rejoinder within an additional 10 days.

Following the exchange of written submissions, the court sets a final hearing for oral arguments. It may, where necessary, appoint an expert, question the parties, or admit witness testimony. These steps may extend the overall timeline, particularly in complex matters.

Although the initial procedural stages are subject to clear deadlines, the total duration of civil proceedings depends on factors such as case complexity, evidentiary needs, the submission of counterclaims, the joinder of a third party to the proceedings and the court's workload. Straightforward cases may be resolved within a year and a half, provided the judiciary is functioning normally, while more intricate disputes may take significantly longer.

If the judgment is appealed, one should expect a similar timetable before the Court of Appeal, and again if the matter is referred to the Court of Cassation.

On a related note, except for specific deadlines such as recourse deadlines (eg, appeal, cassation and objection), judicial deadlines are instructive deadlines that prompt timely action, but do not result in the loss of the right to file a court document. This also extends the procedural timeline.

Law stated - 30 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Yes, under Lebanese law, parties may challenge the court's jurisdiction. This includes international jurisdiction, territorial jurisdiction, functional jurisdiction and subject-matter

jurisdiction. The challenge must be raised as a preliminary defence in the first written submission, namely the statement of defence, and before any discussion of the merits. Failing to do so in time results in a waiver of the right to challenge jurisdiction, except where the court lacks jurisdiction due to public policy grounds (eg, exclusive jurisdiction provisions).

Challenges are examined by the court from the outset, and a ruling is made either before addressing the merits or jointly with the final judgment, depending on the circumstances.

As for anti-suit orders, Lebanese courts do not issue anti-suit injunctions in the same way as common law jurisdictions. However, if a party initiates proceedings abroad in breach of an exclusive jurisdiction clause in favour of Lebanese courts, the affected party may raise that clause before the foreign court or request the Lebanese court to decline enforcement of any foreign judgment ignoring this clause. Conversely, if Lebanese courts find that an exclusive foreign jurisdiction clause exists, they may declare themselves incompetent.

Law stated - 30 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The procedure and timetable in Lebanese civil proceedings are primarily controlled by the court. Once the written submissions are exchanged, no further pleadings may be filed unless a party presents a valid excuse. In such cases, the court may authorise additional submissions and set new deadlines. It also has discretion to shorten time limits in urgent matters (not less than 24 hours) or extend them upon justified request.

While parties cannot unilaterally adjust the timetable, they may jointly declare in writing that they are satisfied with the written submissions and waive oral pleadings. If the court considers the case ready for judgment, it may decide without a hearing and should issue its ruling within the next 30 days.

Law stated - 30 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Lebanese law does not impose a general obligation to preserve or disclose all relevant documents pending trial. However, parties must submit with their pleadings all documents they rely on in support of their claims or defences. They must also adhere to the principle of integrity when presenting evidence.

A party may request the court to compel the other party, or a third party, to produce a specific document in their possession if it is material to the dispute and if it is legally required, jointly held or relied upon by the other party at any stage of the proceedings. If

the opposing party denies possession without sufficient proof, the court may order them to take an oath or risk having the applicant's claim accepted as presented. Failure to comply may lead the court to draw adverse inferences.

Law stated - 30 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Yes, Lebanese law recognises legal privilege. Article 92 of the Law Regulating the Legal Profession prohibits lawyers from disclosing any confidential information obtained in the course of their work, even after the end of the mandate. An exception is made where disclosure is necessary for the lawyer's own defence in proceedings initiated by the client, as per article 4 of the Lawyers' Code of Ethics. This duty is reinforced by article 81 of the Bylaws of the Beirut Bar Association, which prohibits the use of private communications between lawyers without consent of the relevant lawyer, including settlement-related exchanges and negotiations.

As for in-house lawyers, a distinction must be drawn depending on whether they are registered with the Bar or not. In-house lawyers who are registered with the Bar are subject to the same strict rules of professional secrecy as external counsel. Their legal advice is therefore protected by privilege, provided it is given in their capacity as legal professionals. If the in-house lawyer is not registered with the Bar, the confidentiality of their communications is governed instead by the general rules applicable to employees and consultants. These rules still impose a professional confidentiality duty, the breach of which is punishable under the conditions of article 579 of the Lebanese Criminal Code by imprisonment of up to one year or a fine, where disclosure causes harm.

Law stated - 30 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

In principle, while expert reports are exchanged in writing prior to judgment, witness evidence is not submitted in writing pretrial but heard directly during the proceedings.

Witnesses are not required to provide written statements in advance. Their testimony is presented orally during the evidentiary phase, following a court decision authorising the hearing of witnesses. The witnesses are summoned and examined by the court or a delegated judge, not directly by the parties' attorneys.

As for expert evidence, it is also court-driven. Experts are appointed by judicial decision and their mission, deadlines and the nature of their task are strictly regulated. The expert's report is submitted in writing, filed with the court and then shared with the parties, who are given a 10-day period (extendable or reducible) to respond or raise objections.

Notwithstanding the above, any party with legitimate interest may submit a petition before the Summary Affairs Judge, in absence of judicial proceedings, requesting:

- an inspection to be conducted by the Summary Affairs Judge himself. In this case, the Judge retains the discretion to summon any person related to the matter; and
- the issuance of an *ex parte* decision ordering the appointment of an expert to conduct a technical inspection.

Moreover, any person may request from an expert to conduct expertise in the aim of producing the same before the judiciary. In this case, the court retains the discretion to dismiss or rely on such expertise, or to appoint an additional expert to confirm the same.

Law stated - 30 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence is presented primarily through written submissions and occasionally through oral testimony, depending on the type of evidence and the court's authorisation.

Experts submit written reports, but may also be summoned for oral clarification. Witnesses provide oral evidence before the court following judicial authorisation. They are examined under oath, and their testimony is recorded during the hearing. Parties themselves may also be interrogated by the court or a delegated judge at any stage.

Law stated - 30 May 2025

Interim remedies

13 | What interim remedies are available?

According to article 35 of the LCCP: 'Each party may file applications seeking precautionary or interim measures'. Lebanese civil courts and single judges may therefore grant interim or conservatory measures to preserve rights pending final judgment. These measures include:

- preservation of evidence or property;
- orders to maintain or restore the status quo;
- affixing of seals;
- inventorying of assets;
- appointment of a judicial custodian;
- sale of perishable goods;
- provisional injunctions to prevent imminent harm or disruption; and
-

seizure of assets or funds: precautionary attachments may notably be requested before or during proceedings and are issued by the Enforcement Bureau.

In addition, emergency measures can be issued by the Summary Affairs Judge when the case is urgent and the claimant can demonstrate a *prima facie* right and a risk of irreparable harm. In cases where the existence of the debt is not seriously disputable, the same Judge may grant the creditor a provisional advance on account of their claim.

Law stated - 30 May 2025

Remedies

14 | What substantive remedies are available?

Courts may grant a range of substantive remedies depending on the nature of the dispute. These include the following.

- Specific performance: enforcing a party's obligation to perform in nature under a contract, where applicable, and provided that such performance does not require the debtor's personal intervention. Otherwise, the creditor may request the imposition of coercive fines for delay in performance.
- Monetary damages: compensation for material and moral harm caused by contractual or tortious liability.
- Resolution of contracts: termination of contractual obligations either judicially (for breach) or unilaterally where allowed by law or contract, with retroactivity (as if the contract never happened).
- Termination of contracts (*résiliation*): termination of contractual obligations either judicially (for breach) or unilaterally where allowed by law or contract, for the future only.
- Annulment: cancellation of contracts or legal acts due to vitiated consent (fraud, duress, error, lesion), incapacity or illegality. Company resolutions can also be annulled for illegality.
- Restitution: return of property or funds wrongfully held.
- Declaratory relief: judgments that establish rights or legal status without ordering further action.
- Injunctions: preventing or compelling certain acts, particularly in urgent or ongoing matters.

Punitive damages do not exist under Lebanese law.

Law stated - 30 May 2025

Settlement

15 |

Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Yes, Lebanese law allows and encourages amicable settlement at any stage of the proceedings. The court may invite the parties to settle, and judges may facilitate reconciliation.

If a settlement is reached, it is formalised in a signed settlement record and approved by the court, becoming immediately enforceable as a court decision. Parties may also submit a joint request for a judgment confirming the settlement. Out-of-court settlement agreements are governed by contract law, specifically articles 1035 to 1052 of the COC.

As for confidentiality, settlement discussions are protected from the court insofar as article 81 of the Bylaws of the Beirut Bar Association prohibits lawyers from disclosing private correspondence and settlement negotiations to the court during the proceedings without the express consent of the other party.

Law stated - 30 May 2025

Enforcement

16 | What means of enforcement are available?

Civil courts can impose interests and coercive fines (*astreinte*) directly in the judgment to compel compliance with a judicial order (such as the delivery of a good or the performance of an obligation).

In any event, the Enforcement Bureau is responsible for ensuring the enforcement of judgments, official instruments/deeds, and other enforceable titles. Execution must rely on a valid enforceable instrument, and the process is overseen by the Enforcement Bureau presided by a single judge, who rules on objections, suspensions, or disputes arising during enforcement.

Means of enforcement include:

- attachment and sale of movable and immovable property through public auction;
- preventive measures, such as precautionary attachments and interim measures to preserve rights;
- garnishment of a debtor's debt which is held by a third party;
- seizure of wages subject to statutory exemptions;
- enforcement of specific performance, eviction orders, and obligations to deliver goods;
- sealing of premises or assets when entry is denied or preservation of assets is necessary (for example, article 904 of the LCCP allows the enforcement officer to seal premises when the debtor is absent or refuses the enforcement officer's access);
-

imprisonment of debtors in specific cases, such as non-payment of financial compensation arising from a criminal infraction or tort, non-payment of alimony or refusal to hand over a child.

Enforcement officers may also seek the assistance of the police or security forces to execute orders, especially in cases of resistance. This is further supported by article 904, which allows entry into private premises with force when access is denied.

Law stated - 30 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings are in principle public, in accordance with the International Covenant on Civil and Political Rights (ICCPR), ratified by Lebanon, and whose article 14 guarantees the right to a fair and public hearing.

However, this principle has exceptions. As such, article 376 of the LCCP states: 'Trials shall be public unless the law requires or allows them to be held in secret or in chambers'. The court may, for example, order private hearings when public proceedings would jeopardise public order, morality or privacy, especially if it wishes to interrogate the parties in the chambers as allowed by article 218 of the LCCP.

There is no centralised public archive for court filings, and documents disclosed or submitted during proceedings are kept in the court's file, which is maintained by the clerk's office. Unauthorised disclosure or reproduction of documents is prohibited. Only the parties and their legal representatives have access to the case file. In practice, third parties must justify a legitimate interest and obtain court authorisation to consult or obtain documents.

Law stated - 30 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Yes, Lebanese courts not only have the power to order costs but are also required to do so by law. Court costs include judicial fees, expert and witness expenses, and Beirut or Tripoli Bar Association stamp duties.

In principle, it is the losing party who bears these costs, but courts may also allocate them differently. As such, the courts can:

-

order costs against the winning party if the right was acknowledged by the defendant before the filing of the lawsuit, or if it caused unnecessary expenses or withheld decisive documents;

- split costs when both parties' claims are partially dismissed;
- award costs against an intervening party if its intervention is rejected; and
- hold lawyers personally liable for costs arising from unauthorised or unjustified actions, or from procedural errors.

To protect their position on costs, a party may behave procedurally diligently, disclose all relevant evidence in good faith and avoid unnecessary motions. Additionally, a party may object to the amount of court-allocated costs via a dedicated mechanism. Finally, a party may recover compensation for malicious claims or defences of the opposing party, which force the former to incur additional expenses.

If a party is financially unable to bear the costs of litigation, judicial assistance may be granted. This mechanism covers judicial fees, representation and procedural expenses. Judicial assistance is available to Lebanese nationals and, under conditions of reciprocity, to foreign residents. Once granted, the President of the Bar Association appoints a lawyer to act free of charge. This assistance continues throughout appeals and enforcement and may be withdrawn if financial circumstances improve or were misrepresented.

Law stated - 30 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Yes, Lebanese law allows lawyers and clients to freely agree on how legal fees are structured, including contingency arrangements such as 'no win, no fee' agreements. Fee arrangements are encouraged provided the fee does not exceed 20 per cent of the claim's value in civil cases, where courts may intervene to reduce excessive fees, as per article 69 of the Law Regulating the Legal Profession.

In contrast, third-party litigation funding is not addressed under current Lebanese legislation and does not seem to be employed in practice.

Law stated - 30 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

While standalone legal expenses insurance is not commonly available, certain types of insurance, such as professional liability and general liability insurance, may indirectly cover

legal costs. Professional liability insurance protects professionals like lawyers or doctors against claims of negligence or malpractice, whereas general liability insurance typically covers claims of bodily injury, property damage or other physical harm that may occur on business premises or in the course of operations. However, a key limitation of both types is that they generally exclude coverage for intentional damage and contractual liability.

Law stated - 30 May 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions are not recognised under Lebanese law. However, certain associations and unions may initiate legal proceedings to defend the collective interests of their members. For instance, trade unions and professional syndicates engaged in collective labour agreements are permitted to bring claims relating to such agreements on behalf of their members.

Law stated - 30 May 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties in Lebanon may appeal first instance civil and commercial judgments before the competent Court of Appeal. As a rule, all judgments are appealable unless stated otherwise. However, judgments involving claims not exceeding 150 million Lebanese pounds are in principle not appealable, subject to exceptions provided for in article 641 of the LCCP.

Appeals can be brought on many grounds such as jurisdictional errors, procedural irregularities, omissions, misinterpretations of the law or inconsistencies in the judgment. The Court of Appeal reopens the case and rules on both fact and law.

A further appeal by way of cassation before the Court of Cassation is available against final judgments issued by the Courts of Appeal. It must be based on grounds that are exhaustively listed under article 708 of the LCCP, including violations of the law by the Court of Appeal, misapplication or misinterpretation of the law, failure to rule on one of the claims or distortion of evidence. Cassation is generally not allowed for disputes under 300 million Lebanese pounds unless it is based on specific legal grounds such as failure to rule on one of the claims or awarding of relief that was not requested by the parties or exceeds their requests.

Law stated - 30 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

In Lebanon, foreign judgments must obtain a writ of execution to be recognised before they can be enforced, unless an international treaty provides otherwise. Enforcement is not possible, whether against assets or individuals, without this judgment.

The request for enforcement is filed *ex parte* before the President of the Civil Court of Appeal in the area where the defendant is domiciled, resides, or where the assets to be enforced against are located. If none of these conditions apply, jurisdiction defaults to the Beirut Court of Appeal.

According to article 1014 of the LCCP, the writ of execution will be granted if the foreign judgment meets the following conditions:

- it was issued by a court that had jurisdiction under the law of the country of origin, and that this competence is not based solely on the claimant's nationality;
- it is final and enforceable in its country of origin; interim or *ex parte* judgments may also be accepted if they are enforceable there;
- the losing party was properly notified of the proceedings and afforded the right to due process (including an adequate opportunity to present a defence);
- the judgment originates from a state whose laws allow enforcement of Lebanese judgments; and
- the judgment does not breach the Lebanese conception of international public policy.

Ex parte decisions and judgments relating to personal status and legal capacity take effect automatically in Lebanon without the need for exequatur, provided they are not the subject of contentious proceedings. Once granted, the exequatur renders the foreign judgment as enforceable as a domestic Lebanese judgment. The Enforcement Bureau then proceeds with enforcement measures on the debtor's assets if required.

Law stated - 30 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Lebanon is not a party to the Hague Evidence Convention of 1970 and therefore does not follow its procedures for cross-border evidence collection. However, cooperation in civil matters may still be facilitated for obtaining oral or documentary evidence through bilateral treaties or diplomatic channels. For example, Lebanon has concluded a judicial cooperation agreement with Egypt, ratified by Lebanese Law No. 693 dated 5 November 1998. This agreement provides for mutual judicial assistance encompassing civil and commercial

matters, including the transmission of judicial documents and execution of letters rogatory, with limited grounds for refusal of execution (article 13 *et seq.* of the treaty).

In the absence of such treaties, foreign requests for evidence must typically be submitted via diplomatic means and through letters rogatory under general principles of international judicial assistance, and are subject to judicial discretion, especially with regard to public policy and due process.

Law stated - 30 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

No, Lebanon's arbitration law is not based on the UNCITRAL Model Law.

While both frameworks aim to promote fairness and efficiency in arbitration, Lebanon's arbitration regime is inspired by the 1981 version of the French arbitration law.

One of the fundamental distinctions with the Model Law lies in Lebanon's bifurcation between domestic arbitration and international arbitration. Under Lebanese law, an arbitration is deemed international only when it involves international trade interests, a narrower definition than that adopted by article 1 of the UNCITRAL Model Law.

Moreover, the LCCP provisions on arbitration allow for greater judicial intervention and lack some of the procedural regulations that are standard under the UNCITRAL Model Law. For instance, the Lebanese arbitration law is silent on the conduct of hearings, the exchange of submissions, the appointment of experts, the receipt of written or electronic communications and the default of a party.

Despite the differences with the UNCITRAL Model Law, the Lebanese legal system is generally considered arbitration-friendly. Lebanon is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention), the Unified Arab Convention on Commercial Arbitration and no less than 52 bilateral investment treaties (BITs).

Law stated - 30 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

In domestic arbitration, specific conditions must be met for an arbitration agreement to be valid under Lebanese law.

According to article 763 of the LCCP, the arbitration agreement must be in written form. It may also be valid through incorporation by reference, where a written agreement refers to another document that contains an arbitration clause.

When the arbitration agreement is concluded after the dispute has arisen, article 766 of the LCCP requires that the agreement additionally state the subject matter of the dispute.

In any event, the agreement must either designate the arbitrators directly, identify them by their position or outline the method for their appointment.

Moreover, article 762 of the LCCP allows the Lebanese State and its public legal entities to resort to arbitration in the context of administrative contracts only if prior authorisation is granted by the Council of Ministers, based on a recommendation from the competent minister or relevant supervisory authority.

These formal requirements only apply to international arbitration, in the absence of any specific agreement (or institutional rules) to the contrary.

Law stated - 30 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In the event of a difficulty in constituting the arbitral tribunal, the most diligent party may apply to the President of the Court of First Instance having territorial jurisdiction over the seat of arbitration, or, in the absence of such determination, to the Court of First Instance of Beirut, to proceed with the appointment of the arbitrators. Based on the request of one of the parties or the tribunal, the President must render a decision without undue delay. This decision is not subject to appeal, except where the President refuses to appoint the arbitrators on the grounds of the nullity or insufficiency of the arbitration agreement. Any such appeal must be adjudicated expeditiously.

In the context of international arbitration, the parties are allowed to either appoint arbitrators directly or establish a method for their appointment in the arbitration agreement or by reference to institutional rules. Similarly to the solution provided for domestic arbitration, if difficulties arise in appointing the arbitrators (and Lebanese procedural law applies), the party most eager to proceed may request the president of the First Instance Court to intervene, unless otherwise agreed. Where the arbitration is seated outside Lebanon, and Lebanese law applies, the Beirut court assumes jurisdiction to rule on such matters.

Further, if the parties have designated a third party, whether a physical or a legal person, to organise the arbitration, that third party may appoint one or more arbitrators, provided all parties unanimously accept the appointments. In the absence of such acceptance, the third party shall invite each party to appoint its own arbitrator and may then appoint the outstanding arbitrators necessary to complete the panel. If a party fails to make its appointment, the third party is empowered to appoint the tribunal on its own.

When an arbitral institution is the designated third party, its own procedural rules take precedence and may override the default appointment mechanism described above. For instance, both the 2021 ICC Arbitration Rules and the 2024 Lebanese Arbitration and Mediation Centre (LAMC) Arbitration Rules empower the institution to appoint a sole arbitrator when the parties have failed to agree on the number of arbitrators, unless it appears that the appointment of three arbitrators is warranted by the dispute.

In all cases, the number of arbitrators shall be odd, failing which the arbitration will be deemed null and void. If the parties appoint an even number of arbitrators, an additional arbitrator must be added to maintain an odd number. As for the procedure for appointment, this remaining arbitrator is appointed by agreement of the parties, or, failing that, selected by mutual agreement of the existing arbitrators. If no agreement can be reached between the arbitrators either, the President of the competent Court of First Instance intervenes to appoint the additional arbitrator.

Arbitrators may be dismissed only by the unanimous agreement of all parties. As for challenges (or recusals), they may be raised by a party solely on grounds that arise, or become known, after the arbitrator's appointment. The grounds for challenge mirror those existing for recusing Lebanese judges, and are as follows:

- if the arbitrator, or their spouse or fiancée, holds a direct or indirect interest in the dispute, even after the dissolution of such marriage or engagement;
- if the arbitrator is related to a party or a party's counsel or guardian by blood, marriage, lineal or collateral descent, up to the fourth degree of kinship, even after the dissolution of the marriage on which such kinship was based;
- if the arbitrator is related by blood or marriage, up to the fourth degree of kinship, to a board member of a company party to the dispute, or to a director of such a company, if that board member or director has a personal interest in the case;
- if the arbitrator is, or has been, counsel or legal representative of a party (the additional rule that allows recusal of a judge who previously served as an arbitrator for that party does not extend to arbitrators themselves who may be appointed by a party despite a previous appointment);
- if the arbitrator, or one of their relatives by blood or marriage, up to the fourth degree of kinship, had examined the case as a judge, expert or arbitrator, or had given a testimony in the case;
- if arbitrators sitting at the same time on the same panel are related to each other by blood or marriage up to the fourth degree of kinship;
- if the arbitrator expressed an opinion on the same case, even if that opinion was given before their appointment, provable only by written evidence or by the arbitrator's confession;
- if sympathy or animosity between the arbitrator and one of the parties is likely to make the arbitrator unable to render an unbiased award; and
- if one of the parties is a creditor, debtor, servant or relative of the arbitrator, up to the second degree of kinship.

The challenge shall be filed with the Court of First Instance at the arbitration seat, or with the Beirut Court of First Instance failing such determination, within 15 days of the date

on which the party was informed of the arbitrator's appointment or became aware of the grounds for challenge. The Court's decision on the challenge is not subject to any means of recourse.

Unless the parties agree otherwise, the Lebanese arbitration law provides that the proceedings be terminated if an arbitrator is dismissed or successfully challenged (recused), among other specified circumstances.

Law stated - 30 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Only natural persons may serve as arbitrators. This means that a legal entity, such as an arbitration institution, a law firm or a company, cannot itself adjudicate the dispute. If such an entity is designated in the arbitration agreement, it will be considered as tasked with administering, rather than arbitrating, the proceedings, including appointing arbitrators.

Lebanese arbitration law further requires that an arbitrator possess full legal and civil capacity. Accordingly, minors, persons under judicial guardianship, those deprived of their civil rights and individuals declared insolvent (unless rehabilitated) are ineligible to serve as arbitrators.

Beyond these statutory limitations, the parties remain free to select arbitrators based on their expertise, language skills, nationality, or familiarity with the governing law or industry practices. In practice, arbitrators in Lebanon come from a wide range of professional fields. It is common to see law professors, attorneys and current or former judges take on this role. In three-member tribunals, parties may also resort to appointing one arbitrator with technical expertise, such as an engineer in a construction dispute, or a finance professional in a banking case.

Law stated - 30 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Lebanese arbitration law safeguards each party's rights to present its case and enshrines the principles of adversarial proceedings and equality of arms. The arbitral tribunal shall afford every party an opportunity to be heard and to comment on the evidence and legal arguments on which the award will rely. An arbitral award rendered without giving a party a chance to defend itself violates these due process guarantees and constitutes grounds for set-aside proceedings.

The LCCP also contains procedural requirements applicable by default, in the absence of the parties' agreement on institutional rules or specific procedural arrangements. As such,

article 780 authorises arbitrators to compel a party to produce evidence in their possession, thereby reinforcing the arbitral tribunal's ability to uncover relevant facts and ensure a fair process.

Law stated - 30 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Before the arbitral tribunal is constituted, a party may request interim or conservatory relief from the Summary Affairs Judge without violating the arbitration agreement. The LCCP permits such measures when the condition of urgency is met. These may involve preserving evidence, protecting goods or assets that form part of the dispute, maintaining a current situation or preventing imminent harm that could undermine the arbitration proceedings.

In parallel, the Enforcement Bureau may also grant conservatory attachments over assets at any stage of the arbitration, whether before or after the tribunal is formed. The aim is to safeguard enforcement prospects and prevent dissipation of assets while arbitration is ongoing or after the issuance of the final award, pending enforcement.

Beyond interim relief, Lebanese courts may assist arbitrators directly in procedural matters. Arbitrators may turn to the competent court (the court who would have jurisdiction over the underlying dispute) to compel a witness to provide testimony or to order a rogatory commission.

Further, if a claim of forgery has been raised during a domestic arbitration, the arbitral tribunal must stay the proceedings and refer the matter to the competent court. Arbitration may resume only after the court has ruled on the document's authenticity. The same mechanism applies to international arbitrations governed by Lebanese law, unless the parties have agreed on a different procedure.

Law stated - 30 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Lebanese law allows arbitral tribunals to order interim and conservatory measures with regard to pending arbitration procedures. When doing so, arbitrators follow the procedure set out for interim measures taken by Lebanese judges under article 589 of the LCCP. They may, upon the request of one of the parties and with or without a financial guarantee (security), take all provisional and protective measures that serve to safeguard rights and prevent harm. These measures include the affixing of seals, inventorying of assets, appointment of a judicial custodian, sale of perishable goods and description of an existing condition while it lasts.

Law stated - 30 May 2025

Award

32 | When and in what form must the award be delivered?

Unless the applicable arbitration rules dictate otherwise, the final award must be rendered within the time limit set in the arbitration agreement, or, failing such determination, within six months from the date the last arbitrator accepted their mission. This time limit may be extended by the parties' mutual agreement or, upon the request of the tribunal or a party, by a decision of the President of the Court of First Instance.

The award must be in writing and include: (1) the names of the arbitrators, (2) the place and date of issuance, (3) the names and capacities of the parties and their representatives, (4) a summary of the parties' respective statements of facts, requests and supporting evidence, (5) the reasons for the decision and (6) the dispositive section of the award. The award must also be signed by all arbitrators. If a minority refuses to sign, this must be recorded, and the award remains valid.

Law stated - 30 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

The LCCP provides for either appeal or annulment proceedings, depending on whether the arbitration is domestic or international and on the nature of the tribunal's mandate.

In domestic arbitration, awards are, in principle, open for appeal unless the parties have expressly waived that right in their arbitration agreement. However, where the arbitrators have been empowered to act as *amiable compositeur* (to rule in equity (ie, *ex aequo et bono*)), the award is not appealable unless the parties have expressly reserved their right of appeal, in which case, the Court of Appeal also rules in equity.

Even when appeal is excluded, an action for annulment remains available on the following limited grounds:

- absence of a valid arbitration agreement;
- irregular appointment of the tribunal;
- excess of the mandate conferred on the arbitrators;
- breach of the parties' rights of defence;
- omission of any legally required formalities of the award; or
- violation of a rule of public policy.

In international arbitration, the awards are not subject to appeal. They may, however, be set aside on the same grounds as domestic awards, with two key differences: omission of

mandatory formalities requirement is not a ground for annulment, and the public-policy test is confined to breaches of international public policy.

The right to seek the setting aside of both domestic and international arbitral awards is a matter of public policy. Accordingly, the parties cannot contractually waive or exclude this recourse.

Appeals and set-aside recourses shall be filed with the Court of Appeal within whose territorial jurisdiction the arbitral award was rendered, at any time after the issuance of the award, but in no event later than 30 days from the notification of the exequatur decision. Enforcement is automatically stayed during this 30-day period and, if a timely recourse is lodged, for the duration of those proceedings, unless the award has been declared immediately enforceable.

Law stated - 30 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

In Lebanon, arbitral awards (whether domestic, international or foreign) cannot be enforced until the competent court issues a writ of execution. The diligent part must file an *anex parte* application and deposit the final award (translated into Arabic if necessary), together with a certified copy of the arbitration agreement with the registry of the competent court. Once granted, the writ is affixed to the award.

For domestic and international awards rendered in Lebanon, the application is submitted to the President of the Court of First Instance at the seat of arbitration, or to the Beirut Court of First Instance if the seat is unspecified. If the dispute falls under the jurisdiction of administrative courts, the request is made to the President of the State Council. For foreign awards, the request is brought before the Beirut Court of First Instance.

The order enforcing a domestic award is not itself subject to any means of recourse, yet any challenge or appeal of the award automatically extends to the exequatur decision, and enforcement will depend on the outcome of these proceedings. However, an order denying enforcement of a domestic award can be appealed within 30 days of its issuance before the Court of Appeal. Lebanese courts can refuse enforcement solely on the basis of the annulment grounds listed in article 800 of the LCCP.

As for international awards issued by Lebanese-seated tribunals, and awards rendered by foreign-seated tribunals, a decision refusing recognition or enforcement of an award may be appealed, while a decision granting recognition or exequatur may be appealed solely on the limited grounds of (1) lack of a valid arbitration agreement, (2) irregular tribunal constitution, (3) excess of mandate, (4) denial of due process rights or (5) violation of international public policy. Any such appeal must be filed within 30 days of the notification of the Court of First Instance's decision. Once the exequatur becomes final, either because the appeal period has lapsed or the appeal has been dismissed, the award becomes enforceable through the Enforcement Bureau.

Lebanon is a party to the New York Convention, and thus Lebanese courts apply its provisions accordingly. However, due to the reciprocity reservation made upon accession, the Convention applies only to the recognition and enforcement of awards rendered in other signatory states.

Law stated - 30 May 2025

Costs

35 | Can a successful party recover its costs?

Yes. Although no provision from the LCCP explicitly addresses the allocation of arbitration costs, arbitral tribunals enjoy discretion on this question and may order the unsuccessful party to bear the full costs of the arbitration, including the parties' reasonable legal fees, arbitrators' fees, any institutional or administrative fees and other disbursements and expenses.

The 2024 LAMC Arbitration Rules adopt the same 'cost follow the event' principle according to which the tribunal should, in principle, impose the costs on the unsuccessful party but may apportion them differently if equity and the circumstances of the case so require. This mirrors the approach adopted by Lebanese courts in litigation under the LCCP, where costs are generally awarded against the unsuccessful party but may be adjusted when the prevailing party succeeds only in part or has unnecessarily driven up costs through its procedural conduct.

Law stated - 30 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Lebanon offers a range of ADR mechanisms, notably arbitration, mediation and conciliation, though their prevalence differs markedly in practice. While ADR mechanisms have long existed, the challenges faced by the judiciary in recent years have significantly contributed to the growing recourse to these methods.

Arbitration remains the dominant ADR mechanism as it is firmly rooted within the Lebanese legal framework, and local courts are generally supportive of arbitral proceedings and aligned with international arbitration standards.

Mediation, while less practical and common, is a growing alternative. It has been developed through the enactment of Law No. 82/2018 on judicial mediation and Law No. 286/2022 governing conventional mediation, prompting businesses and individuals to incorporate mediation clauses into their contracts. Lebanon has also acceded to the Singapore

Convention on Mediation in 2023, thereby strengthening the framework for the enforcement of international settlement agreements resulting from mediation.

Conciliation, although less formalised, is encouraged under the LCCP, which authorises judges to invite parties to reach a settlement at any stage during litigation.

Law stated - 30 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no general obligation under Lebanese law for parties to engage in ADR before or during proceedings. While Law No. 82/2018 allows judges to propose judicial mediation, this remains voluntary and subject to party consent. Similarly, in arbitration, tribunals cannot bypass the parties' agreement by forcing them to participate in other ADR processes.

That said, judges are empowered by the LCCP to encourage parties to settle through conciliation at any stage of litigation; and even though neither courts nor tribunals can compel the parties to engage in any ADR process without their consent, the legal frameworks in Lebanon now facilitate the use of ADR.

Law stated - 30 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

An interesting feature of the Lebanese dispute resolution system is the duality between the civil courts and the specialised religious courts, which retain exclusive jurisdiction over certain personal status matters such as marriage, divorce, adoption, child custody and inheritance depending on the individual's religious affiliation. The judgments issued by these religious courts are enforced through the ordinary courts.

Law stated - 30 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In the past years, Lebanon's dispute resolution landscape has been shaped by significant developments linked to the ongoing consequences of the financial crisis. Judicial operations continued to face disruption, delaying the resolution of thousands of cases. Litigation against Lebanese banks remained prominent, with depositors pursuing claims both domestically and internationally. The Court of Cassation restricted the jurisdiction of Summary Affairs judges over fund transfer disputes, forcing depositors to pursue proceedings on the merits and initiate insolvency claims, although the Beirut insolvency court has been reluctant to declare banks bankrupt. Conversely, the Court of Cassation issued a landmark ruling clarifying that bankers' cheques do not constitute a valid means of payment, thereby preserving depositors' rights to claim full repayment and rendering the practice by banks of depositing such cheques with a notary public after unilaterally closing accounts unlawful.

In the field of arbitration, the Lebanese Arbitration and Mediation Centre introduced its new Arbitration Rules, effective from 1 July 2024, replacing the prior version of 1995. Additionally, the Lebanese and International Arbitration Center of the Beirut Bar Association organised its first ever Beirut Arbitration Days from 20 to 22 May 2025, during which it announced it would launch the 2025 version of its Rules in the very near future. As for investment arbitration updates, the Emirati conglomerate Al Habtoor Group has served a notice of investment treaty dispute in January 2024 against the Lebanese Republic under the 1998 UAE-Lebanon Bilateral Investment Treaty (BIT). Al Habtoor Group mainly alleged that Lebanon breached the BIT by imposing restrictions that have blocked the repatriation of more than US\$44 million from the Lebanese banks, and by failing to provide a safe and secure environment for its businesses and investments.

More recently, on the legislative front, the Parliament passed a new banking secrecy law on 24 April 2025. The law authorises judicial authorities, regulators and supervisory bodies to access banking information without the need to justify their requests, with retroactive application over the past 10 years, importantly covering the period of the financial collapse that started in October 2019. Moreover, following the partial annulment of Law No. 328/2024 by the Constitutional Council in January 2025, there are no longer any laws suspending judicial deadlines, and ordinary procedural timelines have been reinstated before the courts.

Political changes have in fact created momentum for further reform. Following the formation of a new government headed by the former president of the International Court of Justice and the election of a new president of the Republic, both officials have declared their intention to address the banking crisis and to protect depositors' rights. A new Governor of the *Banque du Liban* (BDL) has also been appointed, and has committed to restructuring the banking sector and restoring financial confidence. As a result, several key legislative initiatives, including a formal capital control law and broader financial sector reforms, are under preparation and expected to be introduced in the near future, with an imminent significant impact on the Lebanese litigation landscape.

Law stated - 30 May 2025



ABOU JAOUDE & ASSOCIATES
L A W F I R M

Carlos Abou Jaoude

c.aboujaoude@ajalawfirm.com

Rania Khoury

r.khoury@ajalawfirm.com

Yasmina El Hitti

y.hitti@ajalawfirm.com

[Abou Jaoude & Associates Law Firm](#)

[Read more from this firm on Lexology](#)

Liechtenstein

[Matthias Niedermüller](#), [Alexander Milionis](#), [Fabian Rischka](#)

[Niedermüller Rechtsanwälte | Attorneys at Law](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Principality of Liechtenstein is a hereditary constitutional monarchy on a democratic and parliamentary basis and is a civil law jurisdiction.

The laws governing dispute resolution are primarily the Code of Civil Procedure (CPC), the Jurisdiction Act (JA) and the Enforcement Act (EA). Non-contentious proceedings are governed by the special Act on Non-Contentious Proceedings in Civil Matters.

The organisation of the courts is governed by the Court Organisation Act. The civil courts all have their seat in the capital Vaduz. In general, there are three levels and only three civil courts in Liechtenstein.

- the Princely District Court (DC);
- the Princely Court of Appeal (CoA); and
- the Princely Supreme Court (SC).

In addition, the Liechtenstein Constitutional Court is established as a separate instance to protect constitutional rights.

Also in dispute resolution matters access to the following international courts of law is possible under certain requirements:

- EFTA Court in Luxembourg (equivalent to the European Court of Justice (ECJ) in the EU); and
- European Court of Human Rights in Strasbourg, France.

omExcept for a few specific matters (eg in state liability matters), the DC is the first instance court for all civil law and criminal law matters and is composed of 16 single judges six of which act as investigating judges in criminal investigations and two mainly deal with foundation supervisory matters. Certain matters in simplified proceedings such as foreclosure, probate and guardianship cases, can also be handled by specially trained non-judicial officials of the DC who are bound by instructions of the judges. There are no juries in civil proceedings.

Both the CoA and the SC are collegiate courts and consist of three, respectively two senates. Each senate of the CoA is composed of three judges (ie, a senate chairman and two senior judges whereas the senates of the SC are composed of a senate chairman and four most senior judges).

There are not yet any special courts installed for specific matters; however, currently discussions are ongoing on a reform of the court system which also could include implementation of special courts for trust law.

The majority of the judges must have Liechtenstein citizenship. In addition, traditionally the SC is composed of professors and experienced Supreme Court judges from abroad. The judges are selected by a selection committee comprising the Reigning Prince and members of the Parliament.

Law stated - 27 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Civil proceedings are governed by certain principles that define the relationship between the court and the parties and their duties (principle of party disposition, principle of party presentation, investigation principle, principle of ex officio proceedings and duty of instruction). In contrast to common law, the judge in a civil law jurisdiction generally has a far more active role when it comes to taking evidence.

The principle of party disposition largely gives the parties control over the lawsuit. The parties decide whether, when and to what extent civil proceedings shall be initiated, what the subject matter of the proceedings shall be and which evidence shall be taken but the truth must be based on the evidence presented by the parties. The parties also are obliged to present their evidence and the judge does not have a duty to ascertain facts on its own. If corresponding facts have been alleged by a party, the judge may collect additional evidence not requested by the parties. However, including documents and the hearing of witnesses is not permitted if both parties object to taking such evidence.

Further, the parties decide the way and point in time the proceeding shall end such as withdrawal, acknowledgement, settlement or court decision. Thus, the judge is bound by the motions of the parties and is barred from deciding on matters that go beyond the subject matter defined by the parties.

Due to the duty of instruction, the judge is obliged to instruct the parties if their pleadings are unclear, incomplete or lack precision and give the possibility for an improvement. In addition, the judge is obliged to discuss the factual and legal pleadings with the parties and may not base the decision on any legal ground of which the parties obviously were not aware without giving the parties the opportunity to make statements beforehand.

In some proceedings such as in foundation supervisory proceedings and non-contentious matters in general, the investigation principle applies which gives the judge extensive control over the subject matter of the proceedings and in particular the ability to decide on evidence to be taken and to even go beyond the scope of applications of the parties when deciding on the matter.

Further, the court has to determine and apply the law ex officio. The principle of *iura novit curia* applies also in all proceedings but only with regards to domestic law. The courts shall also take into account foreign law, but if foreign law applies the parties of the proceedings are obliged to present the foreign law and submit evidence (eg, by presenting the statutory law or by expert witnesses).

Law stated - 27 May 2025

Limitation issues

|

3 | What are the time limits for bringing civil claims?

Liechtenstein law treats limitation periods as a matter of substantive law, not procedural law. The general limitation period is 30 years after a claim arises. However, for certain types of contractual claims, the limitation period is five years (eg, claims for delivery of goods or performance of work or other services in a trade, business or other enterprise, claims for rent, claims of employees, etc) or less (eg, three years for the right to challenge a testamentary disposition).

Claims for damages become time-barred within three years of the damaged party becoming aware of the damage, the damaging party and the causal relation of both. For claims against a financial intermediary in connection with a financial services transaction, the absolute time limit is reduced to 10 years after the claim arises. In all other cases, the absolute limitation period is 30 years after the occurrence of the harmful event. In any event, however, if the damage is caused by a criminal offence punishable with imprisonment of more than three years, the limitation period for such claim is always 30 years.

Law stated - 27 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In Liechtenstein, there are no compulsory conciliation proceedings necessary before filing of a legal action or application.

Anyhow, a party may apply for a conciliation attempt and the summons of the opponent for this purpose. However, this is very unusual, entirely voluntary, and only possible if the opponent resides in Liechtenstein. The non-appearance of the opponent has no consequences.

Law stated - 27 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings are initiated by filing a legal action or application with the DC which includes an outline on the jurisdiction of the court, the set of facts on which the claim or application is based, the evidence that shall be taken to prove the facts and the relief sought. A legal outline is not required; however, in most cases it is recommended to be included for clarification purposes.

Provided the court accepts its jurisdiction, the defendant is notified by being served with the legal action or application ex officio after the court fees have been paid. If the defendant

is not domiciled in Liechtenstein, service of the action and the claim documents is regularly executed by letter rogatory in civil matters via the competent court at the domicile of the defendant.

If the civil proceeding is initiated by an application for an injunction that pursues the purpose of securing the claims, a different process applies.

Liechtenstein courts are widely known to be highly efficient and also able to handle a high caseload of complex and demanding cases with international aspects. Also, they are known to have a very short overall duration of proceedings when compared with other jurisdictions.

Law stated - 27 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

After filing of the legal action, the court fees are due for payment by the applicant. After payment of court fees, the court serves the claim documents to the defendant and sets a date for the first oral hearing. At the first oral hearing, the defendant may raise formal objections (such as lack of jurisdiction) and apply for an order for a security deposit for costs in case the claimant is a person from abroad or a legal entity.

After the security deposit has been made or it is clarified that an exemption from the deposit applies, the court orders the defendant to provide a counter-statement to the claim.

Thereafter, the court schedules a case management hearing where it is determined based on the submissions of the parties which evidence shall be taken. The court also passes an order as to which evidence is expected to be taken.

Subsequently, the case is heard in one or more oral hearings where the parties can present their arguments, witnesses are examined, and expert opinions are obtained as well. If the judge holds that sufficient facts have been taken enabling a decision to be made, the judge closes the taking of evidence, dismisses outstanding further evidence that it considers irrelevant, if any, and finally issues the written judgment.

Generally, factual pleadings including defence and counterclaims for set-off and new evidence (e.g., documents) can be put to the court by the parties until the closing of the oral hearing. The court, however, may refuse to take evidence in case the evidence has been negligently brought forward and if the taking would extend the proceedings considerably. Until first instance proceedings are closed, the respondent can file a formal statement of counterclaim, too.

The duration of the taking of evidence in the first instance highly depends on the subject matter and the complexity of the case. If an extensive taking of evidence is required (eg, a large number of witnesses, hearing of witnesses abroad by letter rogatory, expert witness reports), the taking of evidence at the DC can be up to one year, in complex cases even longer.

Usually, a decision of the DC can be obtained within one year. The appeal proceeding before the CoA usually would take three to six months. In the case of a further appeal to the SC, a decision can also be expected within three to six months.

Law stated - 27 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

If a defendant intends to challenge court's jurisdiction he is obliged to do so during the first hearing before court at the latest, otherwise the right to challenge jurisdiction has lapsed. Accordingly, a respondent who omitted to challenge the jurisdiction of the court is considered to accept court's jurisdiction. Granting the challenge of jurisdiction results in the rejection of the claims.

Liechtenstein civil procedure law does not provide for anti-suits orders in the meaning of orders against a natural or legal person, personally prohibiting them from starting or continuing court proceedings. However, the rules and measures of the EA grant the possibility to apply for injunctions prohibiting persons from all type of actions, thus, also from initiating certain steps such as civil proceedings. Notwithstanding the foregoing, if a claim was or still is subject matter of a lawsuit, the parties involved are prevented from bringing it before court in the course of further proceedings (*res iudicata* or *lis pendens*).

Law stated - 27 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Generally, the judge has control over the case management and, in particular, over the sequence of taking the different evidence offered, when hearings take place and when the taking of evidence is closed and a decision is rendered. However, judges usually try to accommodate the preferences of the parties, too, if they agree on a certain conduct.

In the case of delays in the case handling caused by the other party, applications for setting time limits for taking evidence can be filed, which the judge decides upon the general procedural principles. In the case of substantial delays in the case handling caused by the judge, the parties may apply with the supervisory judge for setting deadlines or file disciplinary complaints.

Some of the time limits are extendable and some are not. Time limits set by the judge are generally extendable. Upon application and when good reason is provided, an extension is granted at the discretion of the judge. Such extension generally cannot be challenged by the opposing party. Time limits set by the law, however, such as limits for filing appeals, cannot be extended.

Law stated - 27 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Other than in several common law jurisdictions, Liechtenstein law neither knows any discovery proceedings nor a duty of parties to preserve evidence in view of an upcoming or pending trial. Only certain licensed entities have an obligation to maintain and archive files for a certain period, however, without being obliged to generally disclose them to the opposite party. Thus, each party generally must ensure it has its own documentation relevant to the claim.

In addition, parties are not obliged to present documentation that may be contrary to their interest. This rule is limited by the principle that each party is obliged to make true, correct and complete statements in the proceeding. Under certain conditions, parties may request the edition of documents in the possession of the opposing party or a third party. This, *inter alia*, applies if a party refers to a document or it is a mutual document.

Law stated - 27 May 2025

Evidence – privilege

- 10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In general, parties and witnesses are obliged to appear and testify. However, there are also certain exceptions under which witnesses may refuse testimony.

This particularly applies in cases of legal secrecy obligations of a lawyer. Section 321 of the CPC provides that a lawyer can refuse to give testimony on all information entrusted to him or her by the client. This privilege must not be circumvented by other means such as the examination of employees or an order to produce certain documents. The privilege includes client–attorney correspondence irrespective of where and in whose possession the correspondence is. This applies to Liechtenstein and foreign lawyers alike. Thus, foreign lawyers who are members of a bar association can invoke the same principles for the client–attorney relationship. The secrecy obligations of an attorney are additionally protected by criminal procedure law. Thus, client–attorney documentation is also generally exempt from seizure in criminal proceedings.

However, in-house lawyers do not enjoy the same protection under procedural law as they are formally not acting as an attorney at law within the meaning of procedural law and the Act on Attorneys.

Additionally, Liechtenstein law provides for a similar secrecy obligation for professional trustees with regard to all information they have been entrusted with by their client, too.

Law stated - 27 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

As opposed to many common law jurisdictions, Liechtenstein law does not have any general duties to preserve evidence or any pretrial discovery obligations.

The CPC only allows for the preservation of evidence under certain conditions. Given the conditions are met, certain witnesses or parties can be heard before the commencement of the case – particularly, if the danger is given that the evidence might no longer be available in the future.

Law stated - 27 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

There are five main types of evidence under Liechtenstein procedural law, namely documentary evidence, witness testimony, expert witness testimony, inspection on the spot and party testimony. This list, however, is not exhaustive. Procedural law accepts other types of evidence such as tape and video recordings, electronic data, biological evidence, etc. Further, as opposed to other jurisdictions, evidence that has been obtained by unlawful acts is permitted in civil proceedings.

As a general rule, each party must evidence the facts that form the basis of the respective position and are favourable to the respective party. Based on the principle of immediacy and orality of proceedings, judges must obtain an immediate impression of the evidence. Thus, only what has been brought forward in an oral hearing may form the basis of a decision. Therefore, witnesses testify orally and are questioned by the court and the parties. Expert witnesses can provide written expert statements and are only heard upon party request.

Records of witness statements from other court proceedings are only admissible as evidence if all parties agree or if all parties were involved in the other court proceedings and the evidence is no longer available.

Witnesses not willing or able to appear before a court in Liechtenstein can be interrogated by a foreign court based on letter rogatory proceedings. In addition, a witness can be heard by means of video conference before the judge abroad instead of sending a list of questions to be answered by letter rogatory under certain requirements.

Law stated - 27 May 2025

Interim remedies

13 | What interim remedies are available?

Under the EA, interim injunctions can be issued upon application prior to, during civil proceedings, or even during enforcement proceedings to secure the claims and rights of the claimant in case the absence of an injunction would lead to the risk that the claims asserted could not successfully be enforced in the future based on the court decision expected to be obtained in the main proceeding. This applies if the future court decision ordering a payment would have to be enforced abroad.

Injunctions for instance can secure monetary claims by putting a lien on certain assets of the defendant located in Liechtenstein that the applicant must identify in the application. In this regard, it is noteworthy that, overall, rights and claims can be seized that only grant indirect access to certain assets, such as instruction rights, voting rights, etc. Injunctions can serve to preserve a certain status quo that shall be adhered to until termination of the proceeding. However, it is not possible to search for and pledge undefined assets of a debtor. Search warrants are only applicable in relation to criminal proceedings.

The applicant must provide prima facie evidence for his claim and the endangerment of the claim that makes the injunction necessary. Endangerment is given if the claimant without an injunction would have to enforce the asserted claims abroad or if the claims could not be effectively enforced.

Based on a current case law of the European Convention on Human Rights, as a general rule, the court shall hear the defendant before issuing the injunction. However, if such hearing before issuing the injunction might jeopardise the effectiveness of the injunction, such that it leads to the risk of disposal or moving of the assets, the injunction can still be issued on an ex parte basis. If so, an injunction usually is obtained within one or two weeks.

Generally, an injunction exists as a standalone measure but must be justified by main proceedings in which a claimant pursues the main claim. Main proceedings can be a proceeding in Liechtenstein or any other proceeding abroad if it leads to a decision enforceable in Liechtenstein. Arbitration proceedings can also serve as the justifying main proceeding.

Granting the injunction, the court sets a time limit within which the initiation of the main proceeding shall be evidenced, otherwise the injunction be lifted. If the main proceedings are already pending, the court determines that they serve as justification for the injunction.

In the injunction, the court can order the applicant to provide a security deposit for costs or damages if it holds that the applicant was not able to sufficiently attest the claims. Further, the injunction is granted at the risk of the applicant who, in the case of loss of the main proceeding, is liable for all loss and damage of the defendant caused by the injunction.

In very urgent cases, so-called super-provisional injunctions can be obtained within a day, which have to be followed up with an application for injunction within two days thereafter.

Law stated - 27 May 2025

Remedies

14 | What substantive remedies are available?

For contractual and tort claims, the principles of damages law provide for restitution in kind (specific performance) as the primary remedy. If restitution in kind is not feasible, regular monetary damages apply. Further, a claimant can also ask for specific performance under a certain agreement as well as for omissions.

However, punitive damages cannot be asked for in Liechtenstein as they are against the principle that only the damage and loss suffered can be remedied. Thus, for the same reason, decisions of foreign courts ordering punitive damages are not enforceable in Liechtenstein in as far as they exceed the actual damage suffered.

Law stated - 27 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Generally, procedural law provides that the court shall attempt a settlement at the oral hearing with the parties present. Liechtenstein law, however, does not provide specific rules governing the process to achieve a settlement. Thus such a settlement process remains rather formal and is highly dependent on the efforts and skills of the presiding judge and the involvement and willingness of the parties. A settlement can be reached out of court or in a court hearing. If a settlement can be reached in a court hearing with the involvement of the judge, the settlement is noted in the minutes of the court hearing. Such settlement then constitutes an enforceable public deed with the same effect and enforceability as a judgment.

The parties also can reach out of court settlements that, however, do not in themselves have the effect of a court decision unless they are also documented in a public deed by a notary.

Law stated - 27 May 2025

Enforcement

- 16** | What means of enforcement are available?

The EA provides for a broad array of enforcement means. Applicability depends on the underlying claim that shall be enforced.

Decisions ordering payments allow the seizure and auctioning of all kinds of assets of the debtor. A lien can be put on all kinds of claims and rights of the debtor that have any monetary value. In particular, claims and rights that only indirectly grant access to assets can be attached and transferred to the claimant. Further, forced administration of companies or other properties is a possible means of enforcement.

If the decision to be enforced orders a party for a personal act or omission for the benefit of another party an enforcement can be made by ordering personal actions of the debtor

subject to fines or imprisonment of up to 12 months if the action cannot be taken by a third person. If the act can also be performed by a third party, the court will order such act to be taken by the third party at the cost of the debtor.

Law stated - 27 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In general, oral hearings and the announcement of a decision in civil proceedings are public. Under certain conditions, however, the public can be excluded from hearings such as if it is required to protect business secrets. Some types of proceedings are not open to the public such as injunction hearings and hearings in non-contentious proceedings regarding very private and family matters. However, recordings of public hearings are not permitted even if they are public.

The entire written documentation regarding the court case such as the submissions, evidence documents and decisions are also not accessible to the public. However, individuals who can show legal interest in the content of the case file can be granted access to the file based on a reasoned application. The court decisions of lower instances are not published. Only certain relevant decisions of the SC are published, though, on an anonymous basis.

As a general principle under constitutional law, hearings in civil court proceedings are public. However, civil procedure law provides for exceptions, particularly where the public order is in danger, family affairs are at issue, or business secrets are concerned. In such cases, the court decides upon application to exclude the public from the court hearing. The court documents themselves, such as submissions, minutes, judgments or orders, however, are not public.

Law stated - 27 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

As a general rule, the losing party must reimburse the costs of the successful party according to the statutory lawyer's tariff. If a party is partly successful, parts of the costs are reimbursed based on the level of success. The law, however, also provides for several exceptions and special rules. The lawyers' tariff defines the costs based on the amount in dispute and certain procedural actions. In the case of lower amounts in dispute, the procedural costs to be reimbursed often do not cover the actual costs the party has to bear vis-à-vis the engaged lawyer.

To protect a defendant's position on costs, given the claimant is resident in a country where a costs award issued by a Liechtenstein court could not be enforced a foreign claimant must provide a security deposit for the presumed procedural costs of the defendant. Generally, legal entities acting as claimants must provide a security deposit for presumed procedural costs. If it turns out during proceedings that the paid security deposit does not suffice to cover the procedural costs, the defendant can request for an additional security deposit. The obligation to make a security deposit also applies in case of appeals of a foreign party or a legal entity.

However, exemptions apply, such as if the entity shows sufficient funds in Liechtenstein or another country where Liechtenstein cost awards are enforceable. Another exemption is provided for cases of legal aid if the claimant and, in the case of legal entities, the persons potentially benefiting from the claim might not make the deposit. Legal aid is granted only if the litigation is not considered vexatious or futile.

Further, in some proceedings, the rules on security deposits do not apply, such as foundation supervisory proceedings.

The security deposit can be provided by wire transfer or by a bank guarantee of any EU/EEA-based bank. Given that sufficient funds of the claimant are held with the respondent (eg, client funds held with a bank or life insurance company), the claimant is not required to provide additional cash deposit if consent is made that the respondent declares set-off with claims for reimbursement of costs.

In the decision on the matter, the court also passes an order to reimburse the necessary and appropriate costs based on the principles defined in the Consumer Protection Act (CPA). These principles allow for refusal to grant reimbursement of costs for certain actions, in particular, if they were unnecessary for the pursuit of the claim. In certain types of proceedings such as non-contentious proceedings, the court has wider discretion on the principles of allocating costs to either of the parties. The amount of the costs is always defined by the lawyer's tariff.

The rules on the reimbursement of costs do not apply during proceedings following the application for an injunction. Cost awards are usually issued with the main decision deciding on the material application or relief sought.

Law stated - 27 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Due to the rules of both the Attorneys Act and the Liechtenstein Civil Code, lawyers are prohibited from entering into *quota litis* agreements or from taking over and pursuing claims at their own risk and cost. Thus, attorneys may also not act as litigation funders. Thus, 'no win, no fee' agreements or other types of contingency fees are not permissible. However,

an attorney can agree on a basic fee with an additional success fee depending on the success of the case, whereas the conditions and amount shall be precisely defined.

However, the limitations under the law do not apply to other persons who do not qualify as attorneys. Therefore, litigation funding is permitted and widely used in Liechtenstein, in particular, in international complex asset recovery matters or arbitration proceedings. Additionally, in cases of mass claims professional litigation funders are getting engaged. Thus, a claimant of a civil case can shift his or her risk of the proceeding to a third party for a share in the outcome of the proceeding. Due to commercial reasons litigation funding, however, in practice is only interesting in case of larger amounts in dispute and only on the side of the claimant.

Law stated - 27 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

There are different types of insurance possible to obtain coverage for protection against the financial risks associated with civil cases as claimant or defendant and associated with other types of proceedings. However, depending on the terms of the insurance policy there can be substantial restrictions on the coverage in terms of scope and amount covered (insurance sum). Further restrictions can apply regarding the hourly rates covered by the insurance. However, a restriction on the selection of the attorney is not permitted.

Further, D&O insurance can provide for coverage not only of the procedural costs but also the financial obligations towards the other party. Thus, insurance is more likely to be utilised in the role of a defendant in a case.

Law stated - 27 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Liechtenstein law does not provide for an institute similar to the class actions under common law.

However, procedural law allows for a joinder of claimants or defendants under certain requirements. Parties can act as joint claimants or defendants if their claims are based on the same or at least similar factual and legal grounds and the claims fall under the jurisdiction of the Liechtenstein courts. If so, the case of the joint parties is heard together.

Further, it is possible to formally join several independent cases together into one case for the taking of evidence. However, even if so separate final decisions are rendered.

However, in any event, it is required that a certain party actively participates in the proceeding and it is not possible to render decisions for or against persons or entities that were not formally party to the proceeding.

The CPA, however, allows consumer protection organisations to file claims for omission on behalf of several individuals, for example, against the terms and conditions of businesses that are disadvantageous to consumers. However, these claims are not class actions in the strict sense as they are limited to determining that certain conduct or clauses are not in accordance with the law and omission is ordered.

Law stated - 27 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Judgments of the DC can be appealed to the CoA within four weeks of receipt. The CoA either confirms, amends or annuls the decision and remands the matter back to the first instance for further taking of evidence or correction of procedural errors and rendering a new decision. An oral hearing at the CoA is only conducted upon application of one of the parties or if the CoA itself considers it necessary. Procedural law allows for new facts and evidence to be presented in the appeal submission as long as the underlying claim that is asserted remains identical. An amendment of the claim is not possible. However, the CoA can refuse to permit further facts or evidence if they were negligently brought forward with delay. In the appeal, the factual findings, procedural errors and legal assessment can be contested. For some procedural errors, a prior rebuke in the oral hearing is required to permit a later contesting of the appeals proceeding.

Unless explicitly excluded by law, decisions of the DC other than judgments, such as orders, can be appealed to the CoA within 14 days of receipt. Exceptions from a separate appeal are procedural orders on the conduct of the proceeding or other decisions that can be appealed together with the main decision.

In general, decisions of the CoA can be appealed to SC, whereas some limitations apply. Judgments of the CoA can be appealed within four weeks. However, an appeal to the SC is excluded in cases of low amounts in dispute (up to 5,000 Swiss francs) or in cases where the CoA has fully confirmed the decision of the DC (up to 50,000 francs amount in dispute). Appeals proceedings before the SC are in writing.

In general, orders of the CoA can be appealed within 14 days of receipt subject to limitations. An order of the CoA confirming an order of the DC cannot be appealed. This applies to cost awards rendered by the CoA in any case.

The SC only deals with the legal questions and procedural errors of the CoA instead of any questions on facts. No new facts are allowed to be entered into the proceeding. The SC decides in writing without a prior oral hearing.

Decisions of the final instance that are conclusive on a certain item and, thus, are not merely remanding a matter back to a lower instance can be appealed to the Liechtenstein Constitutional Court within four weeks of receipt.

In the appeal, only violations of constitutional rights can be asserted, ie, a violation of constitutional rights granted by the Liechtenstein cConstitution and/or the European Convention on Human Rights. The Constitutional Court can only annul the decision at hand and remand back for a new decision in adherence with the constitutional rights. The ordinary courts are then bound by the legal considerations of the Constitutional Court.

Appeals against judgments to the CoA and the SC have suspensive effect and the underlying decision does not become enforceable until becoming final and binding. In contrast, this does not apply to appeals against orders. Therefore, in general, orders are immediately enforceable after being issued and delivered – nonetheless, the higher instance can grant suspensive effect upon application.

An appeal to the Constitutional Court does not have any suspensive effect by itself, too, but such can be granted by its President upon application if conditions under the law are met.

Law stated - 27 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Liechtenstein is not a member state party to any multilateral treaties on the enforcement of court decisions such as the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988/2007 or the Council Regulation (EC) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels Ia Regulation). Thus, foreign decisions only may be enforced in Liechtenstein to a limited extent.

The only exception for multilateral treaties is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to which Liechtenstein is a party.

Under the EA, decisions of foreign courts are generally only recognised and enforceable in Liechtenstein if it is provided for in bilateral treaties or if reciprocity is guaranteed to the government. Given that no such reciprocity declarations have been provided, the latter rule is irrelevant.

Liechtenstein has concluded bilateral treaties on the recognition and enforcement of court decisions in civil law matters only with Switzerland and Austria. Under the treaties, the following requirements further must be met to allow for recognition and enforcement:

- the recognition must not be contrary to the public policy of Liechtenstein and the objection of *res iudicata* must be observed (no prior Liechtenstein decision on the same matter);
- the deciding court must have had jurisdiction based on one of the principles set out in the treaty (eg, mere jurisdiction based on assets would not suffice);

- the judgment must be final and binding according to the foreign law; and
- in the case of a default judgment, the writ of summons initiating the proceeding must have been served on the party in default personally or on a proper representative.

In most cases, foreign decisions cannot be enforced in Liechtenstein. Thus, a foreign creditor must obtain an enforceable Liechtenstein decision to enforce claims into assets located in Liechtenstein. A foreign final and binding decision can serve as a means to allow the creditor to obtain an enforceable Liechtenstein decision in a fast-track proceeding. The foreign creditor can first obtain a payment order of the DC against the debtor. If the debtor files an objection against this payment order within the 14-day time limit, the creditor can obtain an annulment of the objection in a summary proceeding by utilising the foreign final and enforceable decision. If requirements are met the DC declares the annulment of the objection and reinstates the payment order. The debtor can initiate a revocation proceeding within 14 days, which is an own regular contentious proceeding in which the debtor can relitigate the matter. However, the roles of claimant and defendant are reversed, whereby the debtor must act as the claimant and has the burden of proving the non-existence of the claim.

Law stated - 27 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

With regard to legal assistance in civil matters, Liechtenstein has signed the European Convention on Information Relating to Foreign Law and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

Further, the provisions of the Jurisdiction Act provide for that the DC grants legal assistance unless otherwise provided for by bilateral agreements. Legal assistance, however, is refused if the act requested does not fall into the competence of the DC, is prohibited by Liechtenstein law, or if reciprocity is not given. In the case of doubt on the question of reciprocity a binding declaration of the CoA is obtained.

Further, the DC adheres to Liechtenstein procedural law when providing legal assistance.

The most common case of legal assistance for a foreign court in civil matters is the service of documents and the examination of witnesses.

Law stated - 27 May 2025

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

In general, Liechtenstein arbitration follows the Austrian model based on the Model Law on International Arbitration (UNCITRAL). To make the law more attractive and effective Liechtenstein arbitration law, however, included several amendments.

As a rule, claims arisen from rights involving an economic interest that are usually decided by domestic courts are arbitrable. Other claims are arbitrable if the parties are capable of reaching a settlement on the subject matter of the dispute.

Further, disputes in relation to trusts, foundations, or companies can be brought to arbitration, including disputes among participants of a trust or foundation, the removal of trustees of a trust or members of the foundation council or the challenging of resolutions of trustees of a trust or the foundation council.

However, matters that fall within the scope of the foundation supervisory court by law such as the removal of trustees or members of the foundation council for gross breach of duties, or proceedings that are initiated by a public authority ex officio (eg, the Princely District Court (DC) or the Foundation Supervision Authority) are exempt from arbitration.

Law stated - 27 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing and contained either in a written document signed by both parties or in letters, telefaxes and emails, or other means of transmitting messages between the parties that provide a record of the agreement. A contractual referral to a document containing an arbitration agreement such as reference to general terms and conditions constitutes an arbitration agreement, too. Usually, in practice arbitration clauses and agreements define the applicability of the Liechtenstein Arbitration Rules of the Liechtenstein Arbitration Association (LIS), which provide for a detailed and concise set of arbitration rules similar to the Rules of Arbitration, administered by the ICC International Court of Arbitration.

Law stated - 27 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Unless otherwise provided in the arbitration agreement, the number of arbitrators according to the provisions of the Code of Civil Procedure (CPC) is three whereas each party appoints one arbitrator, who then in turn appoint a third arbitrator as chairman. If a party fails to appoint an arbitrator in time after having obtained the request, the arbitrator is appointed by the court upon further request of a party. The appointment of an arbitrator can be

challenged if circumstances exist giving rise to justifiable doubts on the impartiality or independence or does not have the qualifications agreed upon by the parties.

Law stated - 27 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Generally, the parties can freely determine the composition of the arbitral tribunal and can freely agree on the number of arbitrators and the appointment process. By law, only full-time judges of the Liechtenstein courts are excluded as arbitrators. If the parties have agreed on an even number of arbitrators, they appoint a further person as chair. A person approached for possible appointment as arbitrator shall disclose any circumstances relevant to the questions of impartiality or independence. After appointment, an arbitrator shall disclose any such circumstances to the parties without delay, unless they have already been informed and consented to the continuation on this informed basis.

Even if a formal legal education is not required to be eligible as an arbitrator, parties are, of course, well advised to choose a person with the legal and professional expertise for the specific dispute as well as the skills and capacities to handle the process. In practice, often lawyers from the large pool of local and international members of the LIS are selected as they can meet the requirements for complex arbitration cases.

Law stated - 27 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitral tribunal adjudicates the dispute pursuant to the statutory provisions or other provisions as agreed upon by the parties.

Unless the parties have agreed otherwise, any agreement on the applicable law or the legal system of a state shall be construed as referring to the respective substantive law and not to its conflict of laws rules.

In the absence of a choice of law, the arbitral tribunal shall apply the statutory provisions or rules of law it considers appropriate, which is the provisions that have the closest connection to the dispute.

Subject to the mandatory provisions (such as the right to be heard), the parties are also free to agree on the procedural rules. The parties may also refer to other rules of procedure. Failing such agreement, the arbitral tribunal, subject to the provisions of the applicable law, must conduct the arbitration in such manner as it considers appropriate.

Often the arbitration clauses refer to or the parties separately agree to apply Liechtenstein Rules issued by the Liechtenstein Arbitration Association, which provide for a detailed and concise set of procedural rules and thus clarity and certainty.

Law stated - 27 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Generally, the arbitration agreement establishes an exclusion of the jurisdiction of state courts. If a court is approached with a claim that is subject to an arbitration agreement, the court rejects the claim, unless the defendant enters into the claim by making submissions on the matter itself without objecting to the jurisdiction. If the court, however, establishes that there is no valid arbitration agreement or that it cannot be performed, the court can hear the case.

As a general rule, when an arbitration proceeding is pending, no parallel other arbitration case or court case in the same matter can be commenced and any other such claim will be rejected. Some minor exceptions apply.

However, the law provides that even in the case of a valid arbitration agreement, the state courts, in particular, still have competence on the following items which also cannot be overridden by agreement:

- decisions on applications on interim measures in connection with the arbitration case (section 602 CPC);
- appointment, rejection or early dismissal of an arbitrator under certain preconditions (section 604 et seq CPC);
- enforcement of provisional measures validly ordered by the arbitral tribunal (section 610 CPC); and
- decisions on applications to set aside the arbitration award (section 628 CPC).

Thus, the applicant and claimant may apply for injunctive measures before the national courts before or after initiation of an arbitration case. The arbitration case then serves as the justification proceeding.

Law stated - 27 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties in the arbitration agreement, the arbitral tribunal upon request of a party can order provisional or protective measures against a party in relation to the subject matter of the dispute if otherwise the enforcement of the claim would

be frustrated or substantially more difficult or if there is a risk of irreversible damage. Before imposing such measures, the arbitral tribunal must hear the other party and can request the applicant to make a security deposit for potential costs and damages in connection with the demanded interim measure.

As outlined above, the power to enforce an interim measure against the other party solely remains in the competence of the civil courts under the respective domestic laws.

It is noteworthy that, under the Liechtenstein Rules, the competence to order interim measures is only with the arbitral tribunal and the parties cannot address the regular courts with applications for interim measures after the arbitral tribunal has been established.

Law stated - 27 May 2025

Award

32 | When and in what form must the award be delivered?

Once the arbitral tribunal holds that the facts are duly presented and the matter is ready for decision, it will close the proceedings and render the arbitral award.

The award is made in writing and signed by the arbitrators. Unless agreed otherwise, the signatures of most members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator shall indicate on the award the obstacle to the absence of signatures. Unless agreed otherwise by the parties, the award must set out the reasons that form the basis of the decision, the date on which it was rendered and the seat of the arbitral tribunal. A copy of the award signed by the arbitrators is sent to each party.

The award and the documentation on its service are joint documents of the parties and the arbitrators. The arbitral tribunal must agree on the safekeeping of the award and the documentation of its service with the parties. Upon request of a party, the chair confirms that the award is final and enforceable .

Law stated - 27 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Arbitral awards as well as awards ruling on the jurisdiction of the arbitral tribunal can only be challenged with an action filed with the Princely Court of Appeal (CoA) within four weeks of receipt of the award. The action can apply to set aside the award. The CoA has the jurisdiction as first and last instance, notwithstanding a possible extraordinary appeal to the Constitutional Court for alleged violations of constitutional rights.

According to Liechtenstein law, the arbitral award can be set aside for the following reasons:

- there is no valid arbitration agreement in place, or the arbitral tribunal has denied jurisdiction despite the existence of a valid arbitration agreement;

- a party was not given proper notice of the appointment of an arbitrator, the arbitral proceedings or was for other reasons unable to present its case;
- the award decides on a dispute not covered by the arbitration agreement, or contains decisions on matters that are beyond the scope of the arbitration agreement or the applications of the parties;
- the arbitral tribunal was not constituted in accordance with the provisions of the law or the applicable arbitration agreement of the parties;
- the arbitral proceeding was conducted in a manner that conflicts with the Liechtenstein public order;
- the requirements under which an action for reopening could be filed against a court judgment are met;
- the subject matter of the dispute is not arbitrable under Liechtenstein law; and
- the arbitral award conflicts with the Liechtenstein public order.

Law stated - 27 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Liechtenstein is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Thus, arbitral awards obtained before the arbitral tribunal and in proceedings in accordance with the New York Convention constitute enforcement titles and can be enforced in Liechtenstein without re-examination of the merits of the case.

The enforcement of arbitral awards lies in the competence of the state courts and is governed by the provisions of the Enforcement Act. For enforcement, the original or a certified copy of the award along with the confirmation of the arbitrators is required that the award is final and enforceable. If the award is not in German, a translation is also required.

Law stated - 27 May 2025

Costs

35 | Can a successful party recover its costs?

Once the arbitral proceeding is terminated, the arbitral tribunal decides on the reimbursement of costs, unless otherwise agreed by the parties. When deciding on the costs the arbitral tribunal at its discretion takes into account the circumstances of the individual case, in particular the outcome of the proceeding. The obligation to reimburse costs can include all costs reasonable for the purpose of legal prosecution or legal defence.

Together with deciding on the obligation to reimburse costs, the arbitral tribunal shall fix the amount of the costs to be reimbursed, as far as this is possible and the costs are not set

off against each other. The decision on the reimbursement of costs and the amount shall be made in the form of an award (costs award).

Law stated - 27 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

The most important alternative dispute resolution means are arbitration (governed by the Code of Civil Procedure) and mediation proceedings (governed by the Law regarding Mediation in Civil Law Matters), whereas arbitration has a much more important role and mediation is seen as less practical and important.

Liechtenstein implemented the EU Directive on Consumer alternative dispute resolution (ADR). Even if participation is voluntary, companies in Liechtenstein shall inform consumers about the opportunity for ADR proceedings in the case of a dispute. In addition, Liechtenstein offers a Conciliation Board for conflicts with financial service providers, such as asset management companies, banks, professional trustees and others. Given these ADR are voluntary, they do not have an important role in dispute resolution.

Further, Liechtenstein law provides for ADR in the case of disputes on the change of the professional trustee that administrates a foundation and other companies. Here, the Liechtenstein Chamber of Trustees conducts a proceeding and renders recommendations for a handover of the administration in case of conflicts of interest. Not following the recommendations of the Chamber of Trustees could lead to disciplinary consequences for a trustee.

Law stated - 27 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Conducting and participating in ADR is voluntary. Thus, neither a state court nor an arbitral tribunal can compel parties to participate in an ADR process. An exception is given for disputes about parental custody.

Law stated - 27 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

As regards asset recovery or complex commercial litigation, civil litigation is often combined with criminal investigation proceedings as civil claims can be based on suspected criminal activity of the counterparty. Criminal investigations give the creditor and claimant the possibility to obtain additional information and documentation as a private damaged party if house searches and seizures are conducted during the investigations.

Law stated - 27 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Currently, discussions are under way for a reform of the court system that aim to speed up the process and further professionalise the court system. The discussions include a proposal for the merger of the Court of Appeals with the Supreme Court. However, the larger part of the proposals in their current form is widely rejected by the courts and legal practitioners alike as being insufficiently conceived and unnecessary.

An aspect of the proposals that, however, may get wider acceptance is the proposal to introduce a specialised senate at the Court of Appeals for proceedings in foundation and trust law matters to further professionalise the courts and increase the expertise in these important areas of law.

There have been a few landmark decisions of the Princely Supreme Court (SC) in relation to foundation law in the past. One landmark decision of 2018, which was confirmed and specified in several decisions thereafter, deals with the restructuring of Foundations and clarifies the requirements and rules under which the entire assets of a foundation could be transferred to a new foundation such as in cases of restructurings.

In a 2023 landmark decision, the Constitutional Court held that, in addition to an actual gross breach of duty, conflicts of interest may also constitute an important reason for the dismissal of a member of the foundation council. Accordingly, it is not necessary for the member of the foundation board to have violated their duties due to a conflict of interest. Rather, the mere perception of a possible conflict of interest and a resulting abstract threat to the interests of the foundation may be sufficient for the dismissal of the member. The court found that the conflict of interest of the dismissed board member manifested itself in several ways, one of which was the initiation of several civil and criminal proceedings against a beneficiary of the foundation (whether justified or not).

A further landmark decision clarified under which conditions and circumstances a beneficiary can be considered as an entitled beneficiary with a claim on the foundation assets or merely as a discretionary beneficiary. The decision clarifies that the judgment



must be made on a case-by-case basis and is highly dependent on the statutes, by-laws and the overall circumstances.

Further, the SC recently passed a landmark decision that is relevant for asset protection matters when it confirmed that a foreign insolvency administrator has no active standing in a parallel domestic insolvency proceeding and in particular may not appeal the decision or demand handover of the Liechtenstein assets.

Law stated - 27 May 2025

Niedermüller Rechtsanwälte | Attorneys at Law

Matthias Niedermüller

Alexander Millionis

Fabian Rischka

mn@niedermueller.law

ami@niedermueller.law

fri@niedermueller.law

Niedermüller Rechtsanwälte | Attorneys at Law

[Read more from this firm on Lexology](#)

Malaysia

[K Shanti Mogan](#), [Yee Mei Ken](#), [Jimmy S Y Liew](#), [Sathya Kumardas](#)

[Shearn Delamore & Co](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

Malaysia's court system is hierarchical, with the primary courts being (in ascending order) the Magistrates' Court (claims between 5,000 and 100,000 Malaysian ringgit), Sessions Court (claims between 100,001 and 1,000,000 Malaysian ringgit), High Court (claims exceeding 1,000,000 Malaysian ringgit), Court of Appeal and Federal Court. A single judge sits at each level, save for the Court of Appeal and Federal Court where the panel will usually consist of three judges. The court system allows parties to any dispute to appeal from the court of first instance to another court of higher jurisdiction.

There are two high courts of coordinate jurisdiction, namely the High Court of Malaya (Peninsular Malaysia) and the High Court of Sabah and Sarawak (East Malaysia), which sit at each of the states in Malaysia. Courts that are organised by subject matter are mainly situated in Kuala Lumpur.

Malaysia also has Sharia courts, which deal with certain matters involving Islamic law.

Law stated - 30 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The judicial system in Malaysia is adversarial in nature. Courts generally adopt a non-interventionist role in the proceedings and decide on questions of fact and law based on the evidence and arguments advanced by the parties.

The level of intervention by the court during a hearing varies depending on the individual judges, some of whom will undertake a more active inquiry during the hearing. As for judicial intervention during a witness's testimony at trial, notwithstanding the court's power to ask questions under section 165 of the Evidence Act 1950, judicial intervention will not be excessive, and the courts remain neutral and impartial during evidence taking. See *Hong Yik Plastics (M) Sdn Bhd v Ho Shen Lee (M) Sdn Bhd & Anor* [2020] 1 MLJ 743.

In 2009, the Judicial Appointments Commission was established with an aim to make the nomination, appointment and promotion of judges at the High Court, Court of Appeal and Federal Court more transparent and comprehensive.

Law stated - 30 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The Limitation Act 1953 prescribes the following limitation periods:

Nature of action	Limitation period
Actions in contract and in tort.	Six years from the date of the contractual breach or tortious act.
Actions to recover land.	12 years from the date the right of action accrues.
Actions to recover trust property in respect of a breach of trust.	Six years from the date the right of action accrues.
Actions in respect of fraud or fraudulent breach of trust, or to recover trust property or the proceeds thereof from the trustee.	No limitation period.
Actions to enforce court judgment.	12 years from the date the right to enforce judgment accrues.
Actions to enforce arbitral award.	Six years from the date the right to enforce judgment accrues.

In respect of civil suits filed against the government, the limitation period is 36 months from the date of the act, neglect or default, or the cessation of a continuing injury or damage. See section 2 of the Public Authorities Protection Act 1984.

The Limitation (Amendment) Act 2018 recognises that the limitation period may be postponed in instances where:

- there has been concealment of fraud or mistake. Time starts to run from the date of discovery of the fraud or mistake (section 29(1)); and
- the damage was not discoverable before the expiry of six years in an action for negligence. Time will be extended by three years from the date of discovery with no action being possible 15 years after the date the damage occurred (section 6(A)).

Estoppel can apply to defeat a defence of limitation if it can be shown that the party asserting limitation was guilty of an unconscionable conduct. See *Asia General Equipment and Supplies Sdn Bhd & Ors v Mohd Sari bin Datuk OKK Hj Nuar & Ors* [2012] 3 MLJ 49.

Law stated - 30 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Generally, there are no preconditions to initiating proceedings. However, there may be statutory prerequisites to be complied with, such as issuing statutory notices before commencing proceedings to wind up a company, to bankrupt an individual and for leave to commence a derivative action. A pre-action demand may also be required if the contract provides for the same.

A pre-action discovery order may be obtained against possible parties to any intended action if the party seeking discovery establishes, among others, that he has a bona fide cause of action against persons known or unknown, the information and documents sought are necessary, relevant and in the possession, custody or control of the party against whom discovery is sought. See Order 24 Rule 7A of the Rules of Court 2012.

Law stated - 30 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

A complaint is usually initiated by filing either a writ of summons with a statement of claim, or an originating summons with an affidavit, depending on the nature of the proceedings. These documents (save for the affidavit) can be amended after they have been filed, either as of right or with leave.

The plaintiff is required to serve the originating process on a defendant personally or at his last known address by prepaid advice of receipt registered post or in such manner as stipulated under the contract. Service may be effected by way of substituted service with leave of court.

Where a defendant is residing abroad, the originating process may be served out of jurisdiction with leave of court. In such instance, the plaintiff must show, among others, that he has a good arguable case falling within the circumstances set out in Order 11 Rules 1 and 2 of the Rules of Court 2012. See *Joseph Paulus Lantip & Ors v Unilever PLC* [2012] 7 CLJ 693.

The courts in Malaysia are required to hear and dispose matters within set timelines. The number of civil and criminal courts in some states within Malaysia have been increased to deal with the proliferated number of actions filed in recent years. As such, court matters usually proceed timeously.

Insofar as the fees to initiate legal proceedings are concerned, this would vary depending on the court in which the proceedings are initiated and the type of proceedings. Order 91 of the Rules of Court read together with Appendix B provides, inter alia, as follows:

Type of proceedings	Amount (ringgit)
High Court	

Writ of summons + statement of claim	408 (400 + 8)
Originating summons + affidavit in support	168 (160 + 8)
Petition + affidavit in support	168 (160 + 8)
Sessions Court	
Writ of summons + statement of claim or Originating summons + affidavit in support	208 (200 + 8)
Magistrates' Court	
Writ of summons + statement of claim or Originating summons + affidavit in support	108 (100 + 8)

Law stated - 30 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The typical time frame for a commercial claim commenced by a writ of summons that proceeds for trial is as follows:

Step in Proceedings	Timeline
- Upon service of the writ of summons and statement of claim, defendant is required to enter an appearance.	14 days from date of service of summons. 14 days from the date of appearance.

Defendant is required to file a defence (and counterclaim if applicable).	
Plaintiff is required to file a reply to defence (and defence to counterclaim if applicable).	14 days from date of receipt of defence (and counterclaim if applicable).
If any interlocutory application is filed after close of pleadings, the court will give directions at case management on the filing of affidavits and written submissions and fix a hearing or decision date.	Within two – four months from the date of filing of such application.
Upon disposal of interlocutory applications, the court will fix trial dates.	Trials are generally fixed within six to 12 months from the date of filing of the writ.
- After the evidence is concluded at trial, court will direct parties to file transcribed notes of proceedings and written submissions. - The court may fix a hearing date for oral submissions. - Decision of court after full trial.	- Up to three months for filing of notes of proceedings and written submissions. - Within two months from the date of filing of written submissions. - Typically, within three months from the date of written or oral submissions.

Law stated - 30 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Generally, where proceedings are initiated at the appropriate level of court having original jurisdiction to hear the matter, challenges to such court's jurisdiction will not be entertained. Be that as it may, the courts would give heed to an arbitration clause contained in an agreement, so as to give effect to the intention of the parties. However, the party who wishes to enforce the arbitration clause must do so at the earliest avenue and should not take any steps (eg, filing a defence) in court proceedings, and instead should apply for a stay of the court proceedings pending arbitration of the matter pursuant to section 10 of the Arbitration Act 2005 (having similar effect to an anti-suit order), provided that the applicant

can prove the existence of the arbitration agreement (*Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1; *MISC Berhad v Cockett Marine Oil (Asia) Pte Ltd* (Admiralty in Personam No. WA-27NCC-46-05/2020)).

Law stated - 30 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

In Malaysia, court procedure and timelines are largely governed by the Rules of Court 2012. However, it is possible for parties to make requests for enlargement or abridgment of timelines. The Rules also prescribe for pretrial case managements wherein the court may give appropriate orders and directions to secure the just, expeditious and economic disposal of the action including the possibility of settlement of any or all of the issues in the matter. These directions include the filing of pretrial documents such as the bundle of pleadings, bundle of documents, statement of agreed facts, statement of issues to be tried, list of witnesses, summary of case and witness statements. The court may impose sanctions for non-compliance with these directions. See Order 34 of the Rules of Court 2012; *Syed Omar bin Syed Mohamed v Perbadanan Nasional Bhd* [2013] 1 MLJ 461.

Law stated - 30 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Under the present legal framework, there is no duty of automatic disclosure imposed on parties in respect of civil proceedings. Parties are only required, under Order 34 Rule 2(2) of the Rules of Court 2012, to adduce documents that will be relied on or referred to in the course of trial. The duty to disclose will only arise if and when, and to the extent that the court orders disclosure under Order 24 Rules 3 and 7 of the Rules of Court 2012. The court has discretion to order discovery at any time in the course of proceedings. The documents that a party may be ordered to discover include documents that adversely affect his own case or another party's or support another party's case. The party required to give discovery under this provision has a continuing duty to give discovery of all documents falling within the ambit of such order until the proceedings have concluded.

Further, Order 24 Rule 10 of the Rules of Court 2012 allows for inspection of documents referred to in pleadings and affidavits without the necessity of a court order.

In view of the above framework for discovery, preservation of documents pending trial is necessary. Indeed, the destruction of relevant documents can attract penal consequences (see section 204 of the Penal Code). Further, the wilful suppression or destruction of useful documents will lead to an adverse inference that the documents, if produced, would go

against the party who is responsible for withholding or destroying the same (see section 114(g) of the Evidence Act 1950).

Law stated - 30 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Malaysia recognises the concept of legal privilege. Order 24 Rule 13(2) of the Rules of Court 2012 allows a party to object to the production of a document on the ground that it is privileged. The court may inspect the document to decide whether the objection is valid.

Further, communication between solicitors and clients, including legal advice rendered, are privileged and protected from disclosure under section 126 of the Evidence Act 1950. However, such privilege may be expressly or impliedly waived by a client or abrogated by statute and does not apply to communications in furtherance of an illegal purpose.

Our courts have also recognised that litigation privilege under common law continues to apply in respect of communications between solicitors and client as well as third parties for the purposes of or leading to evidence for use in legal proceedings. See *Wang Han Lin & Ors v HSBC Bank Malaysia Berhad* [2017] MLJU 1075.

Communications between an in-house counsel and officers within the organisation are not protected by privilege. See *Toralf Mueller v Alcim Holding Sdn Bhd* [2015] MLJU 779.

Law stated - 30 May 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

The timeline for the filing and exchange of witness statements and expert reports, if any, will typically be ordered by the court at the pre-trial case management. See Order 34 Rule 2(2) of the Rules of Court 2012.

Law stated - 30 May 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Facts required to be proven at trial of any writ action shall be by way of examination of witnesses present physically in Court (Order 38 Rule 1 of the Rules of Court 2012) or by way of remote communication technology (Order 33A of the Rules of Court 2012). The practice today is for the examination-in-chief of a witness to be by way of a written

witness statement in question-and-answer form, although further oral examination-in-chief is permissible. The witness statement must be filed in court and served on all parties not less than seven days before it is to be tendered and read at trial (see Order 38 Rule 2(4) of the Rules of Court 2012). Thereafter, the witness is subject to oral cross-examination and finally re-examination. See section 138 of the Evidence Act 1950.

The evidence of an expert witness is given in a written report signed by the expert and exhibited to an affidavit affirmed by him or her (see Order 40A Rule 3(1) of the Rules of Court 2012 – experts of parties) or directly filed in court (Order 40 Rule 2 – court appointed expert). Similar to witnesses of fact, an expert witness is also subject to cross-examination and re-examination.

Law stated - 30 May 2025

Interim remedies

13 | What interim remedies are available?

Litigants may file applications before the trial or substantive hearing of a claim to obtain various interim remedies, pending the disposal of the substantive claim, including interim injunctions.

An interim prohibitory injunction is only available where a party seeking injunctive relief is able to show a serious issue to be tried, that the balance of convenience lies in favour of the injunction and that damages are not an adequate remedy (see *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193). However, additional considerations apply to specific injunctions such as *Mareva* injunctions, *Anton Piller* orders and mandatory injunctions.

The types of injunctions available include the following:

- a *Fortuna* injunction to restrain a party from presenting a winding-up petition – see *Mobikom v Inmiss Communications Sdn Bhd* [2007] 3 MLJ 316;
- a *Mareva* injunction to restrain a defendant from parting with his or her assets – see *Aspatra Sdn Bhd & 21 Ors v Bank Bumiputra Malaysia Bhd & Anor* [1988] 1 MLJ 97;
- an *Anton Piller* order to allow the plaintiff's representatives to enter a defendant's premises to inspect and remove material and documents – see *Arthur Anderson & Co v Interfood Sdn Bhd* [2005] 6 MLJ 239;
- an anti-arbitration injunction to restrain a party from proceeding with arbitration proceedings – see *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1;
- an anti-suit injunction to restrain judicial proceedings to prevent a multiplicity of proceedings – see *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1;
- an injunction for the detention, custody or preservation of any property that is the subject matter of the suit, or for the inspection of any such property in the possession of a party to the suit – see *Order 29 Rule 2 of the Rules of Court 2012*;

- a proprietary injunction used to preserve and restrain a defendant from dealing with assets/properties that the plaintiff has an existing proprietary interest in – see *Zschimmer & Schwarz GmbH & Co KG Chemische Fabriken v Persons Unknown & Anor* [2021] 7 MLJ 178;
- an injunction for samples to be taken of any property that is the subject matter of the suit, for any observation to be made on such property or for any experiment to be tried on or with such property – see *Order 29 Rule 3 of the Rules of Court 2012*; and
- an injunction to prevent the infringement of intellectual property – see *Radion Trading Sdn Bhd v Sin Besteam Equipment Sdn Bhd & Ors* [2010] 9 MLJ 648; and an injunction to prevent the disclosure of confidential information – see *Teoh Chong Kean v Yeoh Tai Chuan & Anor* [2018] 2 MLJ 669.

Our courts have recognised that injunctions can be granted in aid of foreign proceedings or arbitration (see *Order 29 Rule 1(1) of the Rules of Court 2012*; *Sections 11(1) and (3) Arbitration Act 2005*). In this respect, a worldwide Mareva injunction may also be granted to include assets located abroad to prevent the dissipation of such assets or as part of a plaintiff's coordinated effort for worldwide civil recovery. See *Customs and Tax Administration of The Kingdom of Denmark v Saling Capital Ltd & Ors and Other Appeals* [2021] 7 CLJ 857.

Law stated - 30 May 2025

Remedies

14 | What substantive remedies are available?

After full trial, litigants are able to obtain a variety of reliefs including monetary damages, declarations, temporary and perpetual injunctions and specific performance.

The recognised types of damages are as follows:

- Special damages, where the damage suffered is readily quantifiable in monetary terms. See *Laksamana Realty Sdn Bhd v Goh Eng Hwa and Another Appeal* [2006] 1 MLJ 675.
- General damages, where the damage suffered is not readily quantifiable in monetary terms. See *Laksamana Realty Sdn Bhd v Goh Eng Hwa and Another Appeal* [2006] 1 MLJ 675.
- Aggravated damages, where the defendant's conduct has injured the feelings and dignity of the plaintiff. See *Cheong Fatt Tze Mansion Sdn Bhd v Hotel Continental Sdn Bhd and Hong Hing Thai Enterprise Sdn Bhd (Third Party)* [2011] 4 MLJ 354.
- Exemplary damages, which are punitive damages to punish and deter, where there is oppressive, arbitrary or unconstitutional action by servants of the government, or where the defendant's conduct has been calculated to make a profit for himself or herself that may exceed the compensation payable to the plaintiff. See: *Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors* [2019] 1 MLJ 421.

While there are no rules limiting maximum damages, damages (other than aggravated and exemplary damages) are generally compensatory in nature and will not exceed the actual loss suffered by a plaintiff.

A claim for contractual liquidated damages cannot be recovered simpliciter if tantamount to a penalty. However, in the absence of proof of actual loss, the Court will award reasonable compensation not exceeding the amount stipulated in the contract by applying the concepts of legitimate interest and proportionality. See section 75 of the Contracts Act 1950; [Cubic Electronics Sdn Bhd \(in liquidation\) v Mars Telecommunications Sdn Bhd \[2019\] 6 MLJ 15](#).

The court also may award pre-judgment interest on debts or damages, at such rates as provided under the contract or as the court deems fit, for the whole or any part of the period between the date when the cause of action arose and the date of judgment. See section 11 of the Civil Law Act 1956.

Further, a successful party is also entitled to obtain post-judgment interest on judgment debts based on the rates contractually provided for, or at the rate of 5 per cent per annum as prescribed by the Chief Justice through Practice Direction No 1 of 2012, to be calculated from the date of judgment to satisfaction. See Order 42 Rule 12 of the Rules of Court 2012.

Law stated - 30 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In civil proceedings, the settlement process is governed by Order 22B of the Rules of Court 2012. A party to any proceedings may, before the court disposes of the matter, serve on the other party an offer to settle in the prescribed form. See Order 22B, Rules 1 & 2 of the Rules of Court 2012.

An offer to settle under Order 22B of the Rules of Court 2012 cannot be disclosed to the court until all questions of liability and relief (apart from issue of costs) have been disposed of. See: Order 22B, Rule 5 of the Rules of Court 2012. However, in situations where there are settlement discussions as opposed to an offer to settle under Order 22B of the Rules of Court 2012, it is a common and prudent practice for parties to preface negotiations as being 'without prejudice' to prevent the opposing party from adducing related evidence to the court. See *Dusun Desaru Sdn Bhd & Anor v Wang Ah Yu & Ors* [1999] 5 MLJ 449.

One thing of note is that while without prejudice negotiations are inadmissible in evidence of attempted negotiations, without prejudice negotiations are nevertheless admissible in evidence of the terms of the agreement where the negotiations lead to a successful agreement. See *Malayan Banking Bhd v Foo See Moi* [1981] 2 MLJ 17.

Law stated - 30 May 2025

Enforcement

16 | What means of enforcement are available?

A judgment can be enforced through the following means:

- a writ of seizure and sale, where the judgment debtor's property is seized by the court and sold through an auction (see Order 47 of the Rules of Court 2012);
- a garnishee order made against a debtor of the judgment debtor, to pay sums due to the judgment debtor directly to the judgment creditor (See Order 49 of the Rules of Court 2012);
- a charging order imposed on any interest to which the judgment debtor is beneficially entitled in any securities (see Order 50 of the Rules of Court 2012);
- the appointment of a receiver to manage income from the judgment debtor's assets and make payment to the judgment creditor (see Order 51 of the Rules of Court 2012);
- bankruptcy proceedings against a judgment debtor who is an individual, whose property will vest in the Director General of Insolvency for payment of all his or her debts;
- winding-up proceedings against a corporate judgment debtor, whose property will vest in a liquidator for payment of all its debts and thereafter the company will be dissolved; or
- a judgment debtor summons requiring the judgment debtor (in the case of an individual) or an officer of the judgment debtor (in the case of a company) to attend court and be orally examined on the judgment debtor's ability to satisfy the judgment (see section 4 of the Debtors Act 1957).

Aside from monetary judgments, a party who fails to comply with the terms of a court order can be liable for contempt of court and may be fined or imprisoned. See *Peguan Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] MLJU 242.

Law stated - 30 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In civil proceedings, court filings and proceedings are accessible by the public. See section 15 of the Courts of Judicature Act 1964. Once a document is filed, it is generally considered public and not confidential. Said court filings can be obtained by conducting a file search on the court's system. However, filings in relation to family and adoption matters are now non-accessible by default and can only be accessed by third parties with approval of the court. See Bar Council Malaysia Circular No. 343/2022.

Notwithstanding the above, the courts retain the power to hear a cause or matter in private (ie, in camera) if the court is satisfied that it is expedient in the interests of justice, public

safety, public security or propriety, or for other sufficient reason to do so. See section 15 of the Courts of Judicature Act 1964. Instances where the court may order hearings in camera include where infants are involved, (See *W v H* [1986] 2 CLJ 350) or where confidentiality is required to protect a defendant's legitimate interest in the relevant information (see: *Kingtime International Ltd & Anor v Petrofac E & C Sdn Bhd* [2020] 1 CLJ 862).

If a party wishes court filings to be kept confidential, an application for a sealing or protective order may be made to ensure that only the opposing party's lawyers and certain persons from the opposing party can have access to the confidential information. See *Singham Sulaiman Sdn Bhd v Appraisal Property Management Sdn Bhd & Anor* [2018] 10 MLJ 187. In some instances, the court would inspect the documents first and then decide whether a sealing order should be granted. Additionally, if parts of the document contain confidential information not relevant to the case in question, the court may redact those parts. See *Tokai Corporation v DKSH Malaysia Sdn Bhd* [2016] MLJU 621.

Law stated - 30 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The object of awarding the costs to a litigant is to indemnify him for the expenses he had incurred in successfully establishing his legal rights. A successful party is usually entitled to costs from the losing party. While it is possible to submit a bill of costs to the court that will include details of the costs of the litigation (see Order 59 Rule 7(2) of the Rules of Court 2012), in practice the court will award a lump sum to the successful party as costs, which may not be representative of the actual costs incurred. An appeal against an award of costs can only be brought with leave of court (see section 68(1)(c) of the Court of Judicature Act 1964).

A defendant can seek security for costs under Order 23 of the Rules of Court 2012 if:

- the plaintiff is ordinarily resident out of the jurisdiction;
- the plaintiff is a nominal plaintiff who is suing for the benefit of some other person and there is reason to believe that he or she will be unable to pay the defendant's costs if ordered to do so;
- the plaintiff's address is not stated in the writ or is incorrectly stated; or
- the plaintiff changed his or her address during the proceedings to evade the consequences of the litigation.

Order 59 of the Rules of Court 2012 regulates costs in civil claims. Among others, the scale of costs and/or the factors to be taken account when assessing costs are prescribed therein. One exception to the applicability of Order 59 Rules of Court 2012 is where the small claims procedure (claims where the subject matter does not exceed 5,000 ringgit) is concerned. Under the small claims procedure, costs are limited to 100 ringgit and costs of advocacy are not allowed. See Order 93, Rule 15 of the Rules of Court 2012.

As a rule, the awarding of costs is dependent on the discretion of the courts. See *Golden Star & Ors v Ling Peek Hoe & Anor and another appeal* [2024] MLJU 909; *Bank Simpanan Nasional v Axis Line Entertainment Sdn Bhd & Ors* [2017] MLJU 541. As such, while parties may be watchful of their conduct before and throughout litigation proceedings (as conduct of a party is a major factor in awarding costs), the courts ultimately retain discretion over the issue of costs. Hence, there are no foolproof, guaranteed steps that parties can take to protect their position in relation to costs.

Law stated - 30 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Litigation funding is not permitted due to the operation of the common law doctrines of maintenance and champerty that continue to apply in Malaysia, despite changes in other jurisdictions.

Contingency fee arrangement between solicitors and clients are not permitted in Malaysia.

Section 112(1)(b) of the Legal Profession Act 1976 states that no advocate and solicitor shall enter into any agreement to prosecute any suit or action that stipulates or contemplates payment only in the event of success.

As such, contingency fee agreements are void and unenforceable. See *Lee Mun Keong v Precise Avenue (M) Sdn Bhd & Anor* [2014] 8 CLJ 74.

On a related note, the courts have given judicial endorsement to 'success fees', which are essentially pre-agreed fees in addition to basic legal fees upon fulfilling pre-agreed criteria(s) of success. The main difference between success fee and contingency fee arrangements is that even if the plaintiff loses, basic legal fees are still payable in success fee arrangements whilst no fees are payable at all in contingency fee arrangements. See *Ling Peek Hoe & Anor v. Ding Siew Ching & Ors And Another Case* [2022] 7 CLJ 412; *Lua & Mansor v Tan Ah Kim* [2017] 2 CLJ 175.

Law stated - 30 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

In some instances, insurers offer coverage for legal costs incurred by the insured, which is commonly known as liability insurance policies. These policies are typically undertaken by corporate entities such as large-scale multinational companies and financial institutions with large interests to be protected.

Some examples of the available types of liability insurance policies in Malaysia that may cover legal costs and damages to be paid to the opponent are public liability insurance policy, workers compensation insurance policy, product liability insurance policy, professional indemnity insurance policy and directors and officers liability insurance. Nonetheless, the extent and amount covered will be dependent on the sum insured in the insurance policy taken by the insured.

Law stated - 30 May 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Representative actions are permitted under Order 15 Rule 12 of the Rules of Court 2012. The named plaintiffs and those they represent must share a common interest and a common grievance, and the relief sought must be beneficial to all members. See *Vellasamy Pennusamy & Ors v Gurbachan Singh Bagawan Singh & Ors* [2012] 2 CLJ 712. In this regard, the courts have held that a representative action cannot be brought in relation to defamation claims. See *Liu Thian Leong & Ors v Jee Nyen Chong* (sued in his personal capacity and as an office-bearer of the *Jawatan Kuasa Dewan Siburan (Siburan Hall Committee)* & Ors [2021] MLJU 2306.

This rule is designed to avoid multiplicity of proceedings and evidence need only be given by the named plaintiffs as representatives. A judgment or order made in a representative action binds all parties to the action including those represented.

Law stated - 30 May 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

A party dissatisfied with a decision of the court may appeal to a higher court either as of right or with leave.

Appeals from the magistrates' and sessions courts are to the High Court, and appeals from the High Court are to the Court of Appeal. Most appeals are as of right, although some require leave. Decisions of the Court of Appeal may be appealable, with leave, to the Federal Court. A party seeking to appeal to the Federal Court must show that the appeal involves a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage or an appeal from a decision on the effect of any provision of the Federal Constitution including the validity of any written law relating to any such provision. See section 96 of the Courts of Judicature Act 1964; and *Terengganu Forest Products Sdn Bhd v Cosco Container Lines Co Ltd & Anor and other applications* [2011] 1 MLJ 25.

The Federal Court also has a limited jurisdiction under Rule 137 of the Rules of the Federal Court 1995 to review its own decisions. The Federal Court cannot invoke its jurisdiction under Rule 137 to review its decision on its merits as the review process is not intended to give the losing litigant a second bite at the proverbial cherry. See *Kerajaan Malaysia v Semantan Estates (1952) Sdn Bhd* [2019] 2 MLJ 609. Instead, motions for review are limited to exceptional instances where there has been a manifest miscarriage of justice. See *Yong Tshu Khin & Anor v Dahan Cipta Sdn Bhd & Anor and other appeals* [2021] 1 MLJ 478.

Law stated - 30 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Under the Reciprocal Enforcement of Judgments Act 1958 (REJA), a foreign judgment that is a monetary judgment made by a superior court from the reciprocating jurisdictions listed in the First Schedule (namely the United Kingdom, Hong Kong, Singapore, New Zealand, Sri Lanka, Brunei and certain states in India) may be registered in Malaysia.

The judgment creditor may, within six years from the date of the judgment, apply to the High Court for leave to register the judgment by filing an originating summons supported by an affidavit (see Order 67 Rule 3 of the Rules of Court 2012 of Court 2012). An order giving leave to register a judgment must be served on the judgment debtor and such order shall state the period within which an application may be made to set aside the registration and no execution of the judgment can be issued until expiration of that period. See Order 67 Rule 5 and section 5 of REJA.

Where no reciprocal agreement exists, an action has to be filed on the judgment at common law. The judgment creditor will normally apply for summary judgment, relying on the foreign judgment as proof of the debt. The defences available against the suit are that the foreign court had no jurisdiction, the judgment was obtained by fraud, the judgment would be contrary to public policy, and the proceedings in which the judgment was obtained were opposed to natural justice. See *Hua Daily News Bhd v Tan Chien Chin & Ors* [1985] 1 LNS 131.

Law stated - 30 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Order 66 of the Rules of Court 2012 governs the procedures for obtaining evidence for use in a foreign court.

A person duly authorised may make an ex parte application to the High Court of Malaya on behalf of a foreign court or tribunal for an order for the examination or attendance

of witnesses or for the production of documentary evidence. The application must be supported by an affidavit exhibiting the letter of request, certificate or other document evidencing the desire of the foreign court or tribunal to obtain the oral or documentary evidence for the purpose of the matter pending before it.

In addition, the Attorney General may also apply for an order for the examination or attendance of witnesses or for the production of documentary evidence for it to be used in the foreign court in the following two instances:

- First, where the letter of request, certificate or other document requesting to obtain the evidence is received by the Minister and sent by him to the Registrar with an indication that effect should be given to the request without requiring an application to be made by an agent of any party to the matter before the foreign court or tribunal; or
- Second, where the letter of request, certificate or other document requesting to obtain the evidence is received by the Registrar pursuant to a Civil Procedure Convention that provides for the taking of the evidence in Malaysia to assist the matter before a foreign court or tribunal and where no person is named as the person who should make the necessary application on behalf of such party.

The examination of a witness may be conducted before any fit and proper person nominated by the person applying for such an order before the Registrar or before any other qualified person as the court deems fit. Subject to any other order made in respect of the examination of any witness, the examiner shall send the deposition of the witness to the Registrar. Following that, the Registrar shall send the deposition taken with a sealed certificate to the Minister or other appropriate person in accordance with the Civil Procedure Convention, for transmission to the foreign court or tribunal.

Law stated - 30 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The principal legislation that applies to both domestic and international arbitrations is the Arbitration Act 2005 (AA), which is based on the UNCITRAL Model Law. Order 69 of the Rules of Court 2012 provides the procedural requirements for arbitration-related suits such as the enforcement of arbitral awards.

Law stated - 30 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The formal requirements for an enforceable arbitration agreement are governed by section 9 of the AA, where it is expressly stated that an arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement and must be in writing. A written arbitration agreement may be in the following forms:

- a document signed by the parties;
- an exchange of letters, telex, facsimile or other electronic means of communication that provide a record of the agreement in any form; or
- an exchange of statement of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

Law stated - 30 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The parties to an arbitration agreement are free to decide on the number of arbitrators. However, where the parties fail to determine the number of arbitrators, section 12 of the AA operates to provide for a tribunal of three arbitrators in international arbitrations, and one arbitrator in domestic arbitrations. Section 13(2) of the AA provides that the parties are free to agree on a procedure for appointing an arbitrator or the presiding arbitrator.

Where parties fail to agree on such procedure, and the arbitration consists of three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator as the presiding arbitrator (section 13(3) of the AA). Where section 13(3) above applies and (1) a party fails to appoint an arbitrator within 30 days of receipt of a request in writing to do so from the other party; or (2) the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment or such extended period as the parties may agree, either party may apply to the Director of the Asian International Arbitration Centre (Malaysia) (AIAC) for such appointment (section 13(4) of the AA).

Under section 13(5) of the AA, where in an arbitration with a single arbitrator, (1) the parties fail to agree on the procedure referred to in section 13(2) of the AA; (2) the parties fail to agree on the arbitrator, either party may apply to the Director of the AIAC for the appointment of an arbitrator. Section 13(6) of the AA provides that where the parties have agreed on the procedure for appointment of the arbitrator, (1) a party fails to act as required under such procedure; (2) the parties, or two arbitrators, are unable to reach an agreement under such procedure; or (3) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the Director of the AIAC to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

Section 14(3) of the AA provides that: 'An arbitrator may be challenged only if (a) the circumstances give rise to justifiable doubts as to that arbitrator's impartiality or independence; or (b) that arbitrator does not possess qualifications agreed to by the parties.' A party may challenge an arbitrator appointed by that party, or in whose

appointment that party has participated, only for reasons that that party becomes aware of after the appointment has been made. (section 14(4) of the AA).

Law stated - 30 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The parties to an arbitration agreement are free to decide on their choice of arbitrator(s). It is explicitly provided in section 13 of the AA that no person shall be precluded by reason of nationality from acting as an arbitrator, unless the parties agree otherwise. Arbitral centres such as the AIAC provides a wide pool of arbitrators with a diverse background and experiences. Occasionally, senior counsel from well-established law firms who are experienced in handling large, complex disputes are asked by parties to sit as arbitrator. The outlook for appointing suitable arbitrators remains optimistic.

Law stated - 30 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Yes. The AA applies to arbitration in Malaysia. Parts I, II and IV of the AA, comprising sections 1 to 5, sections 6 to 39 and sections 47 to 51, are of mandatory application in respect of both domestic and international arbitrations where the seat of arbitration is in Malaysia.

Examples of mandatory legislative provisions that apply in Malaysia are as follows:

- Any dispute on which parties have agreed to arbitrate under an arbitration agreement can be determined by arbitration unless it is contrary to public policy, or the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia (section 4, AA).
- Parties must be treated with equality and each party must be given a fair and reasonable opportunity of presenting that party's case (section 20, AA).
- Provisions that are aimed to promote the freedom of choice enjoyed by the parties. For example, the parties are free to:
 - determine the number of arbitrators (section 12(1), AA);
 - agree on a procedure for the appointment of the arbitrator(s) (section 13(2), AA); and
 - agree on the procedure to be followed by the arbitral tribunal in conducting the arbitration (section 21(1), AA).

- A court must stay proceedings that are the subject of an arbitration agreement and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed (section 10(1), AA).

Law stated - 30 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Arbitration in Malaysia can be traced back to as early as 1809 and the role of courts in arbitration matters has evolved ever since. The arbitration clause does not wholly oust the jurisdiction of the court – it simply deprives the court of jurisdiction to enquire into and decide the merits of the case. Section 8 of the AA provides that no court shall intervene in matters governed by the AA, except where it is provided so. While the courts have recognised the policy of minimal curial intervention in the context of section 8 of the AA (*Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1), the court does have powers to support the arbitral process throughout the arbitration.

When there is a binding reference to arbitration, therefore, the proper course is to stay the course until it has been settled by arbitration. The defender has a right to such an order whenever an action has been brought by someone who is party to an arbitration agreement in respect of the subject of the action.

Even though the court does generally practice a minimal-interventionist approach, it is vital to understand that a defendant has to file for a stay of the proceedings before taking any 'steps in the proceedings' if she wants the matter to be arbitrated, otherwise the defendant would be deprived of an order for a mandatory stay. Some examples of 'step in the proceedings' would be giving notice to produce documents, submission of statement of defence and counterclaim, attending summons for directions and seeking a prayer to strike out the plaintiff's writ. The court also has the powers to grant interim measures under section 19 of the AA in aid of the arbitration.

Law stated - 30 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes, the arbitral tribunal has the power to grant interim measures under section 19 of the AA pending the disposal of the matter via arbitration. Upon the request of either party, the arbitral tribunal may order a party to:

- maintain or restore the status quo of the matter pending determination of the dispute;
-

take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;

- provide a means of preserving assets out of which a subsequent award may be satisfied;
- preserve evidence that may be relevant and material to the resolution of the dispute; or
- provide security for the costs of the dispute.

Law stated - 30 May 2025

Award

32 | When and in what form must the award be delivered?

The arbitral award must be made in writing, be signed by the arbitrator or a majority of all the members of the arbitral tribunal, state its date and seat of arbitration and, unless the parties have agreed otherwise or it is an award pursuant to a settlement, also state the reasons upon which it is based (see section 33 of the AA). There is no time limit provided by Malaysian law on the delivery of the award, but the time for making an award may be limited by the arbitration agreement entered into between the parties. If there is a time limit, the arbitrator must deliver the award within that time limit or give notice to extend the time limit where this is provided for under the arbitration agreement between the parties, failing which the award may be set aside (see *Ken Grouting Sdn Bhd v RKT Nusantara Sdn Bhd* [2021] 2 CLJ 173).

The High Court may also extend the time limit, unless otherwise agreed by the parties (section 46 of the AA). However, the High Court may only do so where there is an application made by the arbitrator or the parties and not on its own volition (see *Ken Grouting Sdn Bhd v RKT Nusantara Sdn Bhd* [2021] 2 CLJ 173).

Law stated - 30 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

The extent of the court's power to intervene in arbitral matters is limited to what is expressed in AA, which is, unless the Act provides otherwise the court cannot intervene. When there is a binding arbitration agreement between the parties, the general rule is that it is not proper for the plaintiff to seek a remedy in court when there was a specific provision for arbitration and also appropriate preliminary contractual steps for dispute resolution.

Pursuant to section 6 of the AA, an award is final and binding and may be set aside only if one of the following circumstances in section 37 is established:

- a party to the arbitration agreement was under an incapacity;

- the arbitration agreement is not valid under the law to which the parties have subjected it or under the laws of Malaysia;
- the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- the award contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or was not in accordance with the Act; or
- the award is in conflict with the public policy of Malaysia.

Section 37 of the AA is now the only recourse parties may have in seeking to set aside an award. This is the provision that has been used by Malaysian courts to set aside arbitral awards. The grounds for setting aside an award under section 37 is similar to the grounds under article 34 of the UNCITRAL Model Law and the relevant provision of the New York Convention.

Law stated - 30 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

An award may be enforced by applying to the High Court under section 38 of the AA. Under Order 69 Rule 8 of the Rules of Court 2012, the application shall be made by an originating summons accompanied by an affidavit showing the written evidence that will be relied on, including the original arbitration agreement and the duly authenticated original award or, in either case, a duly certified copy thereof.

Once the application is allowed, the order giving permission to enforce the award shall be served on the respondent by delivering a copy to him or her personally or sending a copy to him or her at his or her usual or last known place of residence or business.

Within 14 days of the service of the order, the respondent may apply to set it aside. The award shall not be enforced until after the expiration of that period or until after the respondent's application (if filed) has been finally disposed of. See Order 69 Rule 8 of the Rules of Court 2012.

Law stated - 30 May 2025

Costs

35 | Can a successful party recover its costs?

Parties are entitled to recover such costs in an arbitration, especially where doing so is provided for in the arbitration agreement. The general principle in Malaysia in relation to the award of costs is for the arbitral tribunal to order costs in favour of the successful party and to award all reasonable costs incurred by that party during the arbitration. This would generally include legal fees and disbursements reasonably incurred by the party in respect of the arbitration.

Law stated - 30 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The general methods of alternative dispute resolution in Malaysia are arbitration, adjudication and mediation.

Arbitration is commonly resorted to in commercial and construction disputes and has to be contractually agreed as the chosen mode of resolving disputes.

Adjudication is resorted to for construction disputes, and operates on a 'pay now, argue later' principle to give 'life' back to the enterprise or underlying contract that had reached an impasse or stalemate. The proceedings are governed by the Construction Industry Payment and Adjudication Act 2012.

In recent years, court-assisted mediation has been gaining traction as there is no cost involved, the process is confidential and has a high rate of success.

Law stated - 30 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Arbitration clauses are strictly enforced by the courts. A suit filed in violation of an arbitration clause will normally be stayed upon the application of the defendant. See section 10(1) of the AA.

When a suit is filed, the court will usually raise the possibility of mediation with the parties during case managements. If parties agree, the mediation can be conducted either by the court or by an external mediator privately arranged by the parties. The former has been the preferable choice for most parties as there is no cost involved.

Law stated - 30 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Small claims procedure

The procedure for small claims is stipulated in Order 93 of the Rules of Court 2012 and is exclusive to the Magistrates' Court for claims under 5,000 ringgit. While the general jurisdiction of the Magistrates Court extends to claims up to 100,000 ringgit, the small claims procedure provides a streamlined and cost-effective avenue for individuals, who are not legally represented, to recover minor debts.

This procedure is designed to be economical, allowing parties to represent themselves without the need for legal counsel, thereby reducing costs and expediting the resolution process. It is specifically available to individuals, including partners in business partnerships, but not to legal entities such as companies or limited liability partnerships (LLPs). However, companies and LLPs can be named as defendants in such claims.

In addition to its financial benefits, the small claims procedure offers significant social advantages. It democratises access to justice by making the legal system more approachable and less intimidating for the general public. This accessibility can lead to increased social equity, as individuals from all economic backgrounds can seek redress for smaller claims without the prohibitive costs associated with hiring lawyers. By simplifying the litigation process, it also encourages a more efficient judicial system, reducing court backlogs and enabling quicker resolutions.

Law stated - 30 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The Companies (Amendment) Act 2024

The Companies (Amendment) Act 2024 introduces significant enhancements to Malaysia's corporate restructuring regime, particularly in relation to schemes of arrangement and judicial management. Key reforms include the automatic moratorium upon filing for a restraining order, the introduction of pre-packaged schemes, a cross-class cram-down mechanism and provisions for super-priority rescue financing. The Act also strengthens court oversight by enabling re-votes, clarifications and formal proof of debt procedures, while expanding access to judicial management and secured creditor rights.

Looking ahead, Malaysia is exploring the adoption of a cross-border insolvency framework aligned with the UNCITRAL Model Law. This would allow Malaysian courts to recognise and cooperate with foreign restructuring and insolvency proceedings, enhancing Malaysia's ability to manage complex, multinational corporate distress. The move signals a broader commitment to aligning domestic insolvency practices with international standards and improving Malaysia's attractiveness as a restructuring jurisdiction.

Cyber Security Act 2024 comes into force

The Cyber Security Act 2024 (CSA) came into operation on 26 August 2024, marking a significant milestone in the regulation of cyber-resilience across critical sectors. Together with four accompanying regulations, the CSA introduces a regulatory regime applicable to public and private entities designated as National Critical Information Infrastructure (NCII) Entities, as well as to providers of certain cybersecurity services.

Key obligations include mandatory annual cyber-risk assessments and biennial audits under the Cyber Security (Period For Cyber Security Risk Assessment and Audit) Regulations 2024. NCII Entities are also subject to strict incident notification timelines under the Cyber Security (Notification of Cyber Security Incident) Regulations 2024, with layered reporting requirements ranging from immediate alerts to detailed follow-ups within 14 days.

Importantly, cybersecurity service providers offering managed security operations centre (SOC) monitoring or penetration testing services must now be licensed under the Cyber Security (Licensing of Cyber Security Service Provider) Regulations 2024. Non-compliance with the CSA, including failure to notify or provide licensed services, attracts severe penalties.

Organisations in critical sectors should proactively review their cyber-response plans and compliance frameworks, taking into account overlaps with sector-specific requirements and forthcoming obligations under the Personal Data Protection Act.

Malaysia strengthens arbitration framework with 2024 amendments

The Arbitration (Amendment) Act 2024 introduces several impactful reforms designed to enhance Malaysia's standing as a preferred seat for international arbitration. Among the most notable changes is the express recognition and regulation of third-party funding (TPF). Parties are now permitted to enter into TPF arrangements, provided these are disclosed before or upon the commencement of arbitration or related court proceedings, or within 15 days after the arrangement is made. While non-compliance with the forthcoming Code of Practice does not render the funder liable to legal proceedings, arbitral tribunals or the courts may consider any non-compliance where relevant. The Code, to be issued by the Minister (Law and Institutional Reform), may address matters such as promotional conduct, minimum capital thresholds, disclosure obligations, funder influence over proceedings and conflict-of-interest safeguards.

Another significant development is the automatic recognition of arbitral awards, which simplifies enforcement by enabling parties to seek recognition from the High Court through an expedited process. This reform brings Malaysia's framework closer in line with the

UNCITRAL Model Law and is expected to be supported by procedural amendments to Order 69 of the Rules of Court 2012.

Further, the restructuring of the Asian International Arbitration Centre (AIAC) is now reflected in the amended legislation, with the role of appointing authority shifting from the Director to the newly established President of the AIAC Court of Arbitration. This structural change is part of broader efforts to enhance the governance and institutional independence within the AIAC, with its procedural functions overseen by the Court and corporate matters by the AIAC Board. These reforms collectively underscore Malaysia's commitment to aligning its arbitration regime with international standards while improving accessibility and efficiency in arbitral proceedings.

Law stated - 30 May 2025

Shearn Delamore &co

K Shanti Mogan
Yee Mei Ken
Jimmy S Y Liew
Sathya Kumardas

shanti@shearndelamore.com
mkyee@shearndelamore.com
jimmyliew@shearndelamore.com
sathya@shearndelamore.com

Shearn Delamore & Co

[Read more from this firm on Lexology](#)

Monaco

Donald Manasse

[Donald Manasse Law Offices](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

Monaco is a civil law sovereign and independent micro-state. There is a court of general jurisdiction (the Tribunal de Premiere Instance), and a Court of Appeals where a second 'trial' on facts and law is heard. The Cour de Revision is the court of last resort, judging only on questions of law. It is the equivalent of the French Cour de Cassation. Criminal cases are tried before the Tribunal Correctionnel, and the Court of Appeals. Particularly serious crimes will be tried before the Tribunal Criminel.

The Justice de Paix exists as a small claims court for claims up to €3,000 and where a matter is on appeal, up to €10,000.

The Tribunal Supreme is the administrative court before which cases against the government administration and on issues of constitutionality of the laws are heard.

Civil cases in the first instance will be heard before three judges. Court of Appeals cases are heard before three judges, of which one is the Presiding judge and is addressed as President. Urgent hearings are heard before one judge.

Judges also act as guardianship judges, and as supervising judges in insolvencies.

There is a special jurisdiction for labour law cases, comprised of lay representatives of employer and employee organisations, in which a professional judge will also sit.

Commercial rent issues are heard before the Court of General Jurisdiction, but if the issue between the parties relates only to the value of the lease, then the matter is referred to an arbitral commission made up of designated lay persons, and one magistrate.

There are no special commercial or financial courts, but commercial cases will be heard on specific days of the week and before usually the same judges.

Law stated - 20 June 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

There are no juries in civil or correctional cases in Monaco. Only the Tribunal Criminel is composed of both jurors and judges (four lay persons and three magistrates).

Although the Code of Civil Procedure provides the possibility of hearing parties or witnesses in civil proceedings, in practice this does not occur. If it were to occur, the judge would be inquisitorial, and would be the only person allowed to pose questions, including those requested by the parties.

Monaco judges are drawn from the Monegasque population but also from the French judges' corps. In France, like in Monaco, the magistrature is a profession, and members will

be trained after law school at the French Ecole Nationale de la Magistrature in Bordeaux. Lawyers can seek to become judges after ten years practice, but unlike in the common law system this is not a common practice. It is unknown in Monaco that a member of the Monaco Bar (of which there are some 35 lawyers) will seek to become a magistrate.

A strong preponderance of judges are women.

Law stated - 20 June 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The general limitations statute to bring a civil claim is five years.

Personal injury claims can be brought within 10 years of the date on which the physical condition of the victim is 'consolidated' or stabilised and not expected to change.

Environmental actions have a 30-year statute of limitations.

Actions for fees by professionals must be brought within two years.

Actions to claim real property can be brought 30 years from the date on which the persons knew or should have known the facts to allow them to bring the action.

The statute of limitations against architects and builders is 10 years.

The parties can agree to modify the general statute of limitations, but it cannot be reduced to less than one year or increased to more than seven years. They can agree reasons to suspend the running of the statute in addition to the reasons listed by law. However, parties cannot modify the limitations period in personal injury, salary payments alimony and child support and other specific cases where payment is required annually or in shorter periods.

The modification of the statute of limitations is not possible in contracts between professionals and consumers or not-for-profit entities.

Law stated - 20 June 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In any money claim, a demand notice should be made on the debtor. This can be done by the creditor, their lawyer, or a bailiff requested to do so.

Ex parte disclosure orders can be sought from the court of First Instance President prior to initiating an action, to obtain information from third parties. Orders can be sought to preserve evidence. Ex parte injunctions to freeze assets can also be sought.

Law stated - 20 June 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil actions are commenced by instructing a bailiff to serve the other party with the equivalent of the summons and complaint. The summons will contain the date and place of the first hearing, the name of the parties and set out the claim.

The Monaco courts have the capacity to handle cases. The courts hear a high number of international law issues and high-value claims.

Law stated - 20 June 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

The normal timetable for a civil claim is 18 months from the serving of the summons to a judgement. At the first hearing, the defendant's lawyer will file a notice of appearance and request the supporting documentation. The court will establish a date for their reply, usually between six to eight weeks. The parties will exchange written pleadings until the parties are satisfied that the oral argument can be heard.

Procedures can be seriously delayed if the parties or the court decide to appoint an expert to evaluate aspects of the claim. Preliminary issues of jurisdiction or standing to sue can also delay outcomes.

Court of Appeals cases are heard as of right. Although no new unrelated claims can be brought, the appellate process is a re-litigation of the first instance process. The normal timetable can take between nine and 18 months.

The court can establish, or a party can request, a calendar that will determine successive dates and a date for 'cloture' or closing of possibility to exchange pleadings in advance of oral argument.

Law stated - 20 June 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The parties (normally the defendants) can challenge the court's subject matter or territorial jurisdiction, and they must do this immediately (*in limine litis*) in their first reply to the plaintiff's summons and complaint, or they waive the right to raise the issue. The court may

of its own initiative raise the issue of jurisdiction and rule, without the parties requesting it, that it does not have jurisdiction to hear a matter. If there is an issue regarding jurisdiction, the prosecutor will also intervene in the matter and provide their position.

Anti-suit injunctions are unknown.

Law stated - 20 June 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties control the procedure and timetable together with the court. A calendar can be requested, usually if the matter has been delayed, to which the parties will be held.

Law stated - 20 June 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no duty to preserve documents or other evidence unless an order has been issued requiring this. There is no obligation to share relevant documents. There is an obligation of loyalty towards the court and the other party in bringing arguments and documents to the court's attention.

A recent reform of the Code of Civil Procedure allows a court to order the production of documents once the lawsuit has begun. There is no contempt procedure for failing to do so, but fines can be imposed. However, the procedure is relatively new and the extent to which civil law judges will order such production' is not settled. Very wide orders, known even here as fishing expeditions', will not be allowed. In a pending civil case against a bank charged with selling bonds days before the collapse of the issuing company, a request was made for the production of all internal communications of the bank relating to the bonds in question. The bank resisted the request, and the court refused to order the production. In a separate unrelated matter, company accounts and registers of personnel entries and departures were ordered produced, but without a fine for failure to produce.

Law stated - 20 June 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In Monaco, in-house lawyers are not members of the Bar and therefore their advice is not protected by the confidentiality granted to attorney-client communications. However, a general provision of the Penal Code (article 308) protects as confidential all information received by a person in confidence in their professional capacity. If a court orders the production of documents, it is possible that the person will object that the information is confidential. Banks that have been ordered to produce information have refused on the basis of bank secrecy but have been ordered to do so by the courts. Parties have been known to threaten to file criminal complaints in breach of confidentiality where such issues arise.

Law stated - 20 June 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Parties exchange documents, legal opinions and written evidence from witnesses and experts prior to oral arguments. The written evidence must be handwritten, and the witness must acknowledge that in the event a false statement is made, there may be criminal sanctions. The witness must state whether they are related by blood or marriage to a party, or are employed or otherwise subordinated to the party for whom they are giving evidence. Criminal complaints against witnesses alleging that they have given false statements in civil actions are not unknown, unfortunately also as a strategy of dissuading or coercing witnesses. Documents or witness statements must be translated into French or may be rejected by the court. Parties do not give statements for themselves. Lawyers do not draft the witness statements, as this is considered improper. Lawyers also would not give affidavits themselves as to the law or the facts in a case where they are representing a party.

Law stated - 20 June 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

There is no oral evidence, although in certain circumstances an expert may be questioned by a court. The pleading lawyer will refer to the evidence in their oral argument, and the court will be given bundles by each of the lawyers in the matter, containing written pleadings and documents exchanged.

Law stated - 20 June 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies such as freezing orders of bank accounts, registration of judicial mortgages on property and attachments of things of value (such as automobiles, yachts, furniture, jewellery and artwork) are all available pre-trial. These can be obtained in support of foreign proceedings, although local proceedings will have to be brought to validate the 'seizure' orders once they have been executed. If there is a dispute as to ownership of personal or real property based in Monaco, a judicial escrow may be ordered to last until the dispute is resolved. However, the Monaco courts would not order seizure or sequestering of assets outside the Principality.

Law stated - 20 June 2025

Remedies

14 | What substantive remedies are available?

Punitive damages are not available. Interest can be awarded from the date of the first demand letter provided it was sent by registered letter or by bailiff. Damages can be awarded for abusive resistance to a demand for payment, but such damages are generally not of any considerable amount.

Law stated - 20 June 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

All correspondence between Monaco lawyers and French lawyers, and exchanged between members of the Bars of the two countries is considered confidential and can not be produced even to the clients themselves. Lawyers will expect that correspondence with lawyers of other countries is confidential unless marked 'Official' as is the case in Monaco and France. The use of correspondence marked 'without prejudice' may not fall under that prohibition to produce particularly if non-lawyers are included in the distribution.

The courts do not necessarily need to be informed that settlement discussions are ongoing nor of their content, but often the requests for adjournments will be justified by evoking ongoing discussions. The settlement may be presented to the court for 'homologation' or approval or incorporation in a judgment, but it is not obligatory.

Once settlement is reached, the document will refer to the article of the Civil Code regarding settlement, and specifically article 1891, which provides that settlement agreements have the same force as a final judgement between the parties.

Where the settlement requires desisting from pursuing an action, a special mandate will be required by the Monaco *avocat-défenseur* to do so.

Law stated - 20 June 2025

Enforcement

16 | What means of enforcement are available?

Court orders can be accompanied by a daily fine for not complying. Enforcement is otherwise assured by bailiffs that can execute against the property of the debtor. For judicial mortgages, property must be subject to a forced sale at auction. The creditor may become the owner if there is no winning bid. However, clauses in contracts that allow title to transfer on default (non-judicial foreclosure) will be considered null. Seizures of valuable objects and shares must also be followed by a public auction.

Law stated - 20 June 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Civil court hearings, other than matrimonial hearings, are public. The practice before the pandemic was that decisions were read publicly but this is no longer the case. Decisions are not always published, and only Monaco Bar members can obtain access to unpublished opinions. The 'roll' of civil court hearings is available to lawyers, but not posted or available to the general public. Summons, pleadings and evidence are not publicly available.

Published cases (as well as unpublished decisions) will not carry the name of the physical persons who are parties.

Judicial hearings are public with certain exceptions: matrimonial actions are always held *huis clos* – in private, as are certain actions between parents and children. Custody and incapacity hearings are held before the guardianship judges and in the presence of the prosecutor but not the public.

Law stated - 20 June 2025

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The court can award costs, and these are assessed on the real costs expended but do not include the legal fees. However, members of the Monaco Bar (*avocat-défenseurs*) can also claim 0.4 per cent of the claim in controversy if their claim or defence is successful, and there is a money judgment. They are entitled to a different percentage on appeal. Not all Monaco *avocat-défenseurs* insist on receiving these sums.

Law stated - 20 June 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency agreements are illegal. However, success fee arrangements, by which whatever fee is paid is augmented in the event of the client's hoped for outcome, are not illegal. Third-party funding is known and has not created difficulty.

Law stated - 20 June 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Insurance for costs is not known in Monaco and not readily available.

Law stated - 20 June 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

There is no 'class action' in the Monaco civil procedure.

Law stated - 20 June 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The parties have a right to appeal. There is no requirement to ask for 'leave to appeal'. The appeal will be a re-trial on the merits. There is a further appeal possible to the Cour de Revision on legal issues only.

Law stated - 20 June 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Monaco only has one bilateral agreement on the recognition of foreign judgments, with France. It is not a member of the European Union and therefore not bound by the regulations on recognition of European judgments.

However, the Code of Private International Law article 15, sets out the rules for recognition (or non-recognition) of foreign judgements. There is no requirement that the foreign country recognise Monaco's judgments (no reciprocity requirement). The foreign judgement will be recognised and enforceable unless it is shown that:

- it was rendered by a court not having jurisdiction or only asserting jurisdiction on grounds indicating an insufficient nexus with that country: temporary presence of the defendant in the foreign country, or on the basis of assets being present in the jurisdiction and not having any relationship to the litigation, or the defendants exercising an unrelated activity in the country;
- the defendant did not have notice and an opportunity to defend;
- the judgment is contrary to Monaco public order;
- the decision is contrary to a decision rendered between the same parties in the Principality, or in a foreign country and recognised in the Principality; or
- a case is pending in the Principality between the same parties and on the same issues, and which was filed first.

Law stated - 20 June 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Monaco has adhered to the Hague Convention on the obtaining of evidence in civil and commercial proceedings abroad of 18 March 1970. It will not execute a request for pretrial discovery.

Law stated - 20 June 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Monaco does not have an arbitration law. A draft law was proposed in 2007 but has not been enacted having met with strong opposition.

Law stated - 20 June 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The requirements for arbitration are set out in the Civil Code articles 940 to 965. While any party may agree to arbitration once a controversy has arisen, only merchants can validly contractually agree to 'arbitrate' any civil disputes arising from a contract. The quality of the person as a 'merchant' under the definitions of the Code of Commerce and the case law is not determined solely from whether they are authorised to do business in Monaco (since any foreigner engaging in a professional industrial or commercial activity must be authorised to do so). Other criteria can be considered to determine whether the person could validly waive the right to dispute resolution in the courts, and be restricted the arbitration process.

The arbitration agreement must be in writing.

Law stated - 20 June 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the agreement is silent on the applicable rules or the applicable law but provides for arbitration, the choice may be made by an application to the court. A party may challenge the appointment of an arbitrator.

Law stated - 20 June 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

There is no public pool of experienced arbitrators in Monaco. There is a depth of experience in certain sectors (shipping, construction, sports law for example). A number of practitioners in Monaco have experience in arbitration (whether members of the Monaco Bar or foreign jurists authorised to practice in Monaco).

Law stated - 20 June 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

There is mention of arbitration in the Code of Civil Procedure, but there is only a general article that specifies that the parties can agree the rules, and if they do not then the procedures of the courts are to be followed. The parties are expected to produce their writings and evidence within fifteen days of the agreement to arbitrate an issue being signed. The arbitration is to be completed within three months of the signing of the arbitration agreement, unless the agreement specifies otherwise.

The arbitrators are expected to apply the law, unless the agreement allows them to be 'amiable compositeurs' and thus to decide in the equivalent of equity.

Law stated - 20 June 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

The arbitral award must be made executory by a court order, and only then can they be executed. The award can be appealed, unless the parties have agreed in the arbitration agreement or at any time not to allow appeals.

Law stated - 20 June 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

There is no instance of arbitrators having power to do so.

Law stated - 20 June 2025

Award

32 | When and in what form must the award be delivered?

The award must be rendered in writing by all the arbitrators. It must be presented to the court of first instance, and an order making it executory must be rendered.

Law stated - 20 June 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

There is a general right of appeal on the merits unless this has been waived.

Law stated - 20 June 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Monaco is a signatory to the New York Convention on the Recognition and Enforcement of Arbitral Awards. The foreign award is presented ex parte to the court of first instance and an order can be rendered for its recognition. The order can then be subject to opposition, for example, if the matter arbitrated is considered not 'commercial'.

A Monaco-based opposition that is followed by an Order of the Court can be enforced as any order of the court.

Law stated - 20 June 2025

Costs

35 | Can a successful party recover its costs?

Costs can be recovered in the arbitration in accordance with the rules as applicable or agreed.

Law stated - 20 June 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Conciliation is required in matrimonial matters as well as in labour and commercial lease value claims.

In matrimonial matters, the parties will first appear before a judge to determine if there can be a conciliation before either party is authorised to file for separation or divorce.

In labour cases, a Bureau de conciliation exists before which claims must first be heard before the matter is litigated before the labour tribunal.

Mediation is proposed in family matters by the social services but is not court mandated.

All justice of the peace cases must be preceded by a conciliation hearing.

Law stated - 20 June 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

The alternative dispute resolution process is required in matrimonial, labour, small claims and commercial lease matters. In general litigation, the parties cannot be compelled to participate in a mediation process.

In matrimonial matters, once the conciliation process has been unsuccessful and the divorce authorised, attempts have been made to request a party to be compelled to mediate, but these have not met the favour of the courts.

Law stated - 20 June 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Because victims in criminal cases can be awarded damages, it is not uncommon that civil cases will be accompanied by criminal complaints in an effort to pressure the other party to settle. This is not considered unethical in the Monaco system, although it is not a tactic that is preferred by criminal court investigating magistrates or judges. The settlement of the criminal complaint can include payment of a sum of money but will not ensure that criminal action will not be pursued.

Law stated - 20 June 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Decisions in Monaco are not all public, although those of the Tribunal Supreme (the administrative court) are published. The Tribunal Supreme is a constitutional court where actions of the government can be contested; in a recent case, a promoter won an award of more than €100 million against the government before that Tribunal, causing controversy. Lawyers will refer to specific key cases or judgments from Monaco and also neighbouring France. There has been a general trend to allow the piercing of the corporate veil of foreign companies holding property in Monaco. In one matter, the enforcement of a New York judgment containing a punitive damages complement was refused in Monaco. However,



in the action of validation of the seizure order allowed by the court against the foreign company assets which ran in parallel, the court of first instance awarded the amount ordered by the New York court, even though the foreign judgment was not recognised. The court of appeals confirmed.

The recent reform of the Code of Civil Procedure allowing courts to order the production of documents will provide case law and an indication of how far judges trained in civil law are willing to extend the requirement for document production, and the sanctions they will impose for failure to comply.

Law stated - 20 June 2025



Donald Manasse

dmm@manasselaw.com

[Donald Manasse Law Offices](#)

[Read more from this firm on Lexology](#)

Netherlands

[Philip ter Burg](#), [Klaas van der Graaf](#), [Sam Amrani](#)

[BUREN](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The court system in The Netherlands consists of 11 judicial district courts, which decide on civil claims on the merits in first instance. Each district court has a number of sub-district venues.

Each district court also has a limited jurisdiction sector, which hears cases on subjects such as consumer law, employment or rent and civil cases involving claims of up to €25,000. For such cases, legal representation by an attorney is not mandatory.

The Netherlands has four courts of appeal, which decide on appeals lodged against judgements by district courts in their judicial district.

Most judgements by courts of appeal can be appealed at the Dutch Supreme Court. Unlike district courts and courts of appeal, the Dutch Supreme Court does not assess the facts, but only arguments regarding the comprehensibility of the judgements and matters of law. In addition, lower Dutch courts can refer prejudicial questions regarding Dutch law to the Dutch Supreme Court (subject to certain conditions).

Further, there are a few Dutch courts with a special mandate:

- the Netherlands Commercial Court (NCC) is based in Amsterdam and facilitates English proceedings in international commercial disputes – parties must agree in writing to the jurisdiction of this court;
- the Court of Appeals in Amsterdam has a dedicated 'Enterprise Chamber' that, among other things, receives corporate disputes in relation to (alleged) mismanagement and shareholder squeeze-out proceedings in first instance;
- the District Court of The Hague has exclusive jurisdiction in relation to certain IP related matters; and
- the District Court of Rotterdam has exclusive jurisdiction in relation to maritime and transport law-related disputes.

Law stated - 14 June 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Cases are typically either heard by one (straightforward cases and summary proceedings) or three judges (complex cases) assisted by a court clerk.

Judges decide on cases based on the facts brought forward by the parties. As to these facts, judges are typically inquisitive, especially during a hearing. Judges will also, in practice, often actively explore the possibility for a settlement during a hearing.

Judges must, in principle, supplement legal grounds ex officio based on the facts and arguments brought forward by the parties.

Law stated - 14 June 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The general statutory period of limitation pursuant to Dutch law is 20 years. However, in most cases, claims become time-barred after five years or an even shorter period prescribed by statutory law.

For example, and among other exceptions, the right to claim specific performance of a contractual obligation and the right to claim damages under a contract become time-barred after five years. The right to claim the purchase price under a sales contract with a consumer becomes time-barred after two years. Incremental penalty payments that have become due based on violation of a court order become time-barred after six months.

The applicable statutory period of limitation can be interrupted by (1) a letter in which a party unambiguously reserves its rights in relation to its claim or (2) by initiating legal proceedings.

Law stated - 14 June 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

For contractual claims, the counterparty must be (put) in default before initiating legal proceedings. Common practice, although not always required in this respect, is to send the counterparty a formal notice letter prior to initiating legal proceedings.

There are typically no other mandatory pre-litigations steps. Exceptions to this apply, for instance, in the context of collective actions (section 3:305a of the Dutch Civil Code (DCC)) and cases of mismanagement brought before the Enterprise Chamber (section 2:349 DCC).

Law stated - 14 June 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

There are two main types of civil proceedings in The Netherlands. Proceedings for ordinary civil suits are initiated by serving summons onto the opposing party and subsequently providing these summons to the court. In addition, there is a substantial category of less formal proceedings (eg, in relation to employment, leases, family and certain corporate matters) that are initiated by an application to the court, which subsequently shares the application with any interested parties.

The Netherlands has a well-developed legal and court system. The capacity (and constraints thereof) depends on the court in question. Some (especially) appeal courts have quite a full (hearing) calendar, which can lead to delays when scheduling a hearing, and courts may suspend the scheduled judgment date.

The amount of court fees depends on, among other things, the stage of the proceedings (first instance, appeal and supreme court), whether the proceedings are initiated by summons or by application, the claim amount and whether the claimant is a natural person or a legal entity.

Law stated - 14 June 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The period between the service of summons in proceedings in first instance by the bailiff on a defendant and the date of formal court appearance by the defendant is at least one week. Subsequently, a defendant in summons proceedings has six weeks to submit a written defence statement, which can include a counterclaim. Following this defence statement, the court will typically schedule a hearing in which it will question the parties on the relevant facts and explore settlement options, followed by a judgement. All in all, proceedings in first instance typically take anywhere between six months and a year. This can be longer if evidence is provided through witness testimony at trial or the court issues interim judgements.

Law stated - 14 June 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties can challenge the court's jurisdiction. Pursuant to rules of Dutch procedural law, such a challenge must be submitted before all other defences (ie, ultimately in the first written defence statement).

Law stated - 14 June 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Dutch courts do not schedule case management hearings as part of the ordinary course of civil proceedings. Courts in first instance or in appeal may, however, do so in exceptional (complex) cases at the request of the parties or ex officio.

An exception is the NCC, where active case management is typically organised in consultation with the parties through a conference, in which issues, motions and a timetable are discussed.

Law stated - 14 June 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Parties have a procedural duty to present the facts in a complete and truthful manner, meaning they cannot refrain from submitting documents if this would lead to an incomplete or untruthful overview of the facts. Pursuant to new Dutch rules of civil evidence law that entered into force on 1 January 2025, parties are obligated to collect and submit to the court all information that can reasonably be considered of interest for the decision in a case. This implies that relevant documents must be preserved and submitted.

Law stated - 14 June 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Dutch law recognises the concept of legal privilege for lawyers admitted to the Dutch bar for lawyer-client communication and communication between lawyers and other lawyers. No distinction is made between legal advice privilege and litigation privilege. In-house lawyers are entitled to legal privilege if they are admitted to the bar (in the Netherlands or abroad) and have concluded a professional charter (or equivalent agreement, for a foreign in-house counsel) with their employer. Additional conditions apply for non-EU, EEA and Switzerland counsel.

Law stated - 14 June 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

No.

Law stated - 14 June 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence can be provided by any means, unless otherwise provided by law.

If evidence by witnesses is permitted by law, the court shall order the examination of witnesses as often as one of the parties so requests and the facts offered by it are disputed and may be relevant for the decision of the case. They may also do so ex officio. Witnesses shall be examined in court and the court may order that the parties must be present in person during the examination of witnesses.

Experts can also play a role in civil cases. The court may appoint independent experts to provide an expert opinion. Parties are also free to submit their own expert reports to support their arguments.

When dealing with cross-border cases, practitioners need to consider international treaties, agreements and regulations. Obtaining foreign evidence for use in Dutch civil proceedings or vice versa involves specific procedures.

Law stated - 14 June 2025

Interim remedies

13 | What interim remedies are available?

A party with a claim can start a pre-judgement attachment procedure (also known as conservatoir beslag) that serves as an interim remedy when a respondent (typically a debtor) appears likely to remove or dissipate assets or evidence from the jurisdiction where ongoing court proceedings are taking place.

Interim relief proceedings (known as kort geding) provide a way to effectively protect certain rights and interests in urgent cases before a court decides on the main proceedings. Interim relief proceedings allow parties to seek temporary relief when regular civil proceedings would take too long. These proceedings are suitable for urgent matters where there is a threat of infringement of rights or interests by another party. The decision in interim relief is generally provisional and not final.

Interim proceedings are suitable to ensure compliance with contractual agreements when the claimant has an urgent interest, to prevent imminent infringement, to release attached assets, in the case of omission of harmful publications, or to terminate unlawful situations.

A preliminary examination of witnesses before proceedings are pending may be ordered at the request of an interested party. Interested parties may be the person who is considering bringing proceedings before the civil court, the person who expects such proceedings to

be brought against them or a third party who has an interest in such proceedings in some other way. A preliminary examination of witnesses, if the proceedings are already pending, may be ordered at the request of a party. The application shall be made to the court before which the case is pending. This can also be the court of appeal.

The court hearing the application for interim measures may grant leave to take interim measures to protect evidence to an applicant who has made it sufficiently plausible that their intellectual property rights have been infringed or are likely to be infringed. These measures for the protection of evidence may include, in addition to those already provided for by law, the seizure of evidence, detailed description and sampling of allegedly infringing movable property, materials and tools used in its production and documents relating to the infringement.

Any person having a legitimate interest in doing so may, at their own expense, request inspection, copies or extracts of certain documents relating to a legal relationship to which their legal predecessors are parties from the person who has those documents at their disposal or in their custody. Documents include information placed on a data carrier. If necessary, the court shall determine the manner in which inspection, copies or extracts shall be provided.

Law stated - 14 June 2025

Remedies

14 | What substantive remedies are available?

Dutch law provides various remedies, including specific performance, damages, rescission, declaratory judgments and injunctions. However, punitive damages are not typical, and interest can be awarded on money judgments.

Law stated - 14 June 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In the Netherlands, parties are encouraged to explore settlement options before proceeding to trial. Settlement agreements can be reached at any stage of the proceedings, even during trial.

Dutch law does not specifically address the confidentiality of settlement discussions. Parties can agree to keep settlement negotiations confidential by subjecting such discussions to a non-disclosure agreement. If the parties agree to confidentiality, the court will generally respect their wishes and not inquire about the details of the settlement discussions. However, if a party alleges that the settlement agreement was reached under duress, fraud or mistake, the court may inquire into the circumstances. If the settlement relates to public policy matters, the court may also examine its content.

If a settlement is reached outside the hearing, the content of the settlement does not have to be shared with the court. The parties can withdraw the case from the court without further substantiation.

If a settlement has been reached at the hearing, minutes shall be drawn up, signed by the judge and the parties or their special agents for that purpose, setting out the undertakings that the parties undertake as a result of the settlement. The issue of this report shall be in the form of an enforceable order.

The content of settlement negotiations conducted between lawyers may not be disclosed to the court or body to whose judgment the case is submitted without the consent of the opposing party's lawyer.

Law stated - 14 June 2025

Enforcement

16 | What means of enforcement are available?

Judgments are enforced through a bailiff. The bailiff serves the judgment on the debtor, giving them a final opportunity to pay the debt. If the debtor fails to comply, further enforcement measures can be taken, such as through attachment and subsequent selling of the counterparty's assets.

A court order may contain an order for incremental penalties, which fall due if the judgement is not observed.

Law stated - 14 June 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings are, in principle, public and case details are accessible. However, mechanisms like confidentiality clubs exist to protect sensitive information, especially in trade secret cases. The Netherlands emphasises transparency while balancing the need for confidentiality.

Law stated - 14 June 2025

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Under Dutch law, the losing party pays the costs; however, the court assesses costs based on fixed tables. These costs include court fees and legal fees. Lawyers' fees are generally billed based on hourly rates. Conditional fee agreements (where fees depend on the outcome) are possible but not for the entire sum. The court may order costs payable by one party to another, usually a fraction of the actual lawyer's fees, but exceptions exist for certain types of cases. Subject to certain exceptions, claimants are not required to provide security for the defendant's costs, and protective measures can be taken both before and during proceedings.

Law stated - 14 June 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

No win, no fee agreements between lawyers and clients are only partly permitted for most type of cases. A lawyer is not allowed to charge no fee when the case is not won; however, it is possible to charge a lower fee that increases retroactively when the case is won. The lower fee must cover the lawyer's costs. An agreement between the lawyer and client can entail that the lawyer works for an hourly rate but if the case is won, the hourly rate is twice or triple the initial amount.

Third-party funding is permitted in the Netherlands for both state court litigation and arbitration. Parties to litigation can share their risk with third parties. A claimant may, for example, sell a portion of any recovery to investors in exchange for an upfront payment or an defendant might pay a fixed sum to offset a proportion of their potential liability.

Law stated - 14 June 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance in the Netherlands provides coverage for legal costs, including both the insured party's own costs and potential liability for opponent's costs.

Law stated - 14 June 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In the Netherlands, several mechanisms allow for collective redress. The Collective Settlements of Mass Claims Acts enables collective settlements of mass claims. Under this mechanism, an association or foundation with full legal capacity can represent the interests of multiple injured parties and initiate a single claim against the responsible party before Dutch courts.

The Collective Redress of Mass Damages Act, which came into force on 1 January 2020, allows for collective redress in cases related to events occurring on or after 15 November 2016. A central public register records all pending collective actions. Representative organisations can claim collective monetary damages on behalf of injured parties. During a specified period, other representative organisations may file similar collective actions related to the same events, facts and legal points. After this period, all related collective actions are consolidated for efficient handling.

Law stated - 14 June 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In principle, subject to certain exceptions, judgments can be appealed. The appellate court comprehensively reassesses the case unless expressly stated otherwise in the law or if the parties have agreed to waive the right to appeal. Unlike appeals in cassation, there are no limited grounds on which judgments can be appealed.

Any subsequent appeals (review) to the Supreme Court must also be filed within three months from the appellate court's judgment. The Supreme Court does not decide on the facts of the case but only considers whether the lower courts applied the law correctly.

Law stated - 14 June 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The Netherlands recognises and enforces foreign judgments based on EU regulations, bilateral conventions, and principles of comity. Specific conventions simplify the process, and the exequatur procedure ensures proper authorisation for enforcement. Dutch law requires judicial authorisation for the recognition and enforcement of foreign judgments. The exequatur procedure is used to obtain approval from the Dutch court. The origin of the foreign judgment determines the procedural steps required for enforcement in the Netherlands.

Law stated - 14 June 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The Taking of Evidence Regulation provides for different options to obtain evidence for the use in civil proceedings in other jurisdictions. The court from another member state may request the Dutch court to obtain evidence in the Netherlands or may request to directly obtain evidence in the Netherlands by the court of that other member state.

For each possibility, the use of technology for remote communication is enhanced. The Taking of Evidence Regulation also lays down detailed rules for the digital presence of a court of the member state where evidence is taken (in the case of direct taking of evidence) and of the court requesting the taking of evidence in another member state (in the case of the taking of evidence by the court of that other member state).

The competent court of a member state may also summon and hear a party domiciled in another member state as a witness in accordance with the law of the member state of that court. Expert evidence to be taken in the territory of another member state may also be obtained in accordance with the law of the member state of the court, unless the taking of evidence is likely to affect the official authority of the member state in which the investigation is to be conducted.

Law stated - 14 June 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Although the Dutch arbitration law is not directly based on the UNCITRAL Model Law, there are similarities and influences. The UNCITRAL Model Law lays down general principles that are also relevant to Dutch arbitration law. Both the Model Law and Dutch law contain provisions relating to the validity and enforceability of arbitration agreements and Dutch law has similar provisions to the Model Law guidelines for the recognition and enforcement of arbitral awards.

Law stated - 14 June 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Although an arbitration agreement does not have to be in writing, it must be proven by an instrument in writing. For this purpose, any instrument in writing that provides for arbitration or that refers to standard conditions providing for arbitration is sufficient, provided that this instrument is expressly or impliedly accepted by or on behalf of the other party. The arbitration agreement may be proven also by electronic means.

Law stated - 14 June 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The arbitral tribunal must be composed of an uneven number of arbitrators and may also consist of a sole arbitrator. If the parties have not agreed on the number of arbitrators the number shall, at the request of either party, be determined by the Provisional Relief Judge of the District Court. An arbitrator may be challenged if justifiable doubts exist as to their impartiality or independence.

Law stated - 14 June 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

The arbitrators are appointed by any method agreed by the parties. The parties may entrust to a third person the appointment of the arbitrators or any of them. If no method of appointment is agreed upon, the arbitrators shall be appointed by consensus between the parties. If the appointment of the arbitrators is not made within two months after the commencement of the arbitration, the arbitrators shall, at the request of either party, be appointed by the Provisional Relief Judge of the District Court. The other party shall be given an opportunity to be heard. If the parties have agreed on an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal. Unless the parties have chosen for arbitration under the rules of an arbitration institute(eg the Netherlands Arbitration Institute), there is no prescribed pool of arbitrators and every expert may qualify for appointment as arbitrator.

Law stated - 14 June 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

The Dutch Arbitration Act governs both substantive and procedural aspects of arbitration within the country. Parties are allowed by agreement on, for example, the applicable law or rules of an arbitration institute to deviate from most of the substantive and procedural requirements.

Law stated - 14 June 2025

Court powers to support the arbitral process

- 30** | What powers do national courts have to support the arbitral process before and during an arbitration?

National courts step in to support the arbitral process where needed. Their involvement respects the arbitration agreement executed by the parties and the decisions of the arbitral tribunal.

Law stated - 14 June 2025

Interim relief

- 31** | Do arbitrators have powers to grant interim relief?

During pending arbitral proceedings on the merits, the arbitral tribunal may, at the request of either party, grant interim relief, including injunctions with a penalty payment in case of violation. However, seizure of property or documents is a privilege of the court and an order of the interim relief judge of the court is required for seizure.

Law stated - 14 June 2025

Award

- 32** | When and in what form must the award be delivered?

The arbitral tribunal may render a final award, a partial final award or an interim award. The award must be in writing and signed by the arbitrators. If a minority of the arbitrators refuses or is incapable to sign, the other arbitrators shall mention that beneath the award signed by them. This statement shall be signed by them. In addition to the decision, the award shall contain in any case: (1) the names and addresses of the arbitrator or arbitrators; (2) the names and addresses of the parties; (3) the date on which the award is made; (4) the place where the award is made; and (5) the reasons for the decision.

Law stated - 14 June 2025

Appeal or challenge

- 33** | On what grounds can an award be appealed or challenged in the courts?

Arbitral appeal against an arbitral award is possible only if the parties have provided for it by agreement.

A party may, up to three months from the date of dispatch of the award, request the arbitral tribunal in writing to correct any manifest error that lends itself to simple correction or render

a supplementary award if it failed to rule on one or more claims or counterclaims that were subject to its discretion.

Dutch law has an exhaustive list of grounds on the basis of which at the request of a party the Dutch courts may (partially) set aside an arbitral award: (1) if there is no valid arbitration agreement; (2) if the arbitral tribunal was constituted in violation of the rules applicable to it; (3) if the arbitral tribunal failed to comply with its mandate; (4) if the arbitral award was not signed or substantiated; or (5) the arbitral award, or the manner in which it was made, is contrary to public policy.

Law stated - 14 June 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The Netherlands are a party to the New York Convention. A request for an exequatur must be filed with the competent Dutch Appeal Court. In the absence of a treaty on the recognition and enforcement of arbitral awards, or if an applicable treaty allows recourse to the law of the country in which recognition and enforcement is sought, an arbitral award made in a foreign state may be recognised and enforced in the Netherlands, upon filing the original or a certified copy of the arbitration agreement and the arbitral award, unless:

- the party against whom recognition or enforcement is sought asserts and proves that:
 - a valid arbitration agreement is lacking;
 - the arbitral tribunal was constituted in violation of the rules applicable thereto;
 - the arbitral tribunal has not complied with its mandate;
 - the arbitral award is open to appeal before arbitrators or the court in the country where the arbitral award was made;
 - the arbitral award has been set aside by a competent authority of the country where that award was made; or
- the court finds that recognition or enforcement is contrary to public policy.

Once an exequatur has been obtained, the bailiff can foreclose the award on the debtor's assets.

Law stated - 14 June 2025

Costs

35 | Can a successful party recover its costs?

Dutch arbitration law does not deal with the recovery of legal fees or costs. The parties may in the arbitration agreement agree on the allocation of costs. In the absence of such

agreement the arbitrators can decide this allocation. Normally the arbitrators decide that the losing party bears the costs of arbitration, including the legal fees of the other party, provided that these are reasonable. The arbitrators may also award third-party funding costs.

Law stated - 14 June 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

In the Netherlands, mediation and binding advice are the most common ADR processes. Binding advice is a form of alternative dispute resolution based on article 7:900 of the Dutch Civil Code. This entails that Dutch law needs to be the law applicable to the contract. The parties agree to leave the determination of their undetermined or partially determined legal relationship to a third party to whose judgement they commit themselves in advance. A successful binding advice process results in an enforceable settlement agreement between the parties.

Law stated - 14 June 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In the Netherlands, mediation or other ADR processes are not mandatory before starting legal proceedings. This leaves aside that the court may recommend, but not oblige, parties to try ADR first.

Law stated - 14 June 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

An attractive aspect typical for Dutch law is the possibility to levy a provisional attachment on the assets of a foreign party located in the Netherlands (*saisie foraine*). Since a large number of international companies have a holding, finance or operational company in the Netherlands, and since a lot of goods pass through the Dutch ports, it is often attractive to

attach a foreign debtor's assets in the Netherlands. As an added advantage, a *saisie foraine* in the Netherlands gives the Dutch courts jurisdiction to resolve the dispute between the parties.

Law stated - 14 June 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

From 6 May 2024, digital litigation in summary proceedings in trade and family matters has been possible in all courts.

A revision of the law of evidence in civil proceedings has been effective from 1 January 2025: the duty of truth and completeness in the Code of Civil Procedure is supplemented, putting more emphasis on information gathering prior to civil proceedings. It also clarifies the judge's role in ascertaining the truth, including the power to discuss the factual basis of the claim, application or defence with the parties. Further, the right of inspection is included in the regulation of evidence, the preliminary evidence orders are merged into one request and the record of findings is added as evidence.

Law stated - 14 June 2025



Philip ter Burg
Klaas van der Graaf
Sam Amrani

p.terburg@burenlegal.com
k.vandergraaf@burenlegal.com
s.amrani@burenlegal.com

BUREN

[Read more from this firm on Lexology](#)

Nigeria

[Isaiah Bozimo SAN](#), [Daniel Ihueze](#), [Afolasade Banjo](#), [Folashade Dosunmu](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

Nigeria's judicial system is structured hierarchically and governed by the 1999 Constitution of the Federal Republic of Nigeria (as amended) ([the 1999 Constitution](#)).

At the highest level is the Supreme Court, which serves as the final legal authority in the country. It hears appeals from the Court of Appeal and deals with significant constitutional matters. The Supreme Court consists of panels of at least five justices, increasing to seven for original jurisdiction cases or critical constitutional issues.

The Court of Appeal is the intermediate appellate court, reviewing cases from lower courts. It typically hears cases in panels of three justices, although this number can increase to five for constitutional matters or in cases where it has original jurisdiction.

Below the Court of Appeal are various high courts, including the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory and State High Courts. These courts generally have a single presiding judge and handle a wide range of civil and criminal matters.

While Nigeria does not have a dedicated commercial or financial court, the Federal High Court has jurisdiction over various commercial and financial disputes. This includes matters related to banking, foreign exchange, company operations, taxation and fiscal issues involving federal legislation or federal entities. State high courts handle contract-based commercial and finance cases.

Law stated - 30 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In Nigerian civil proceedings, the judge is a neutral observer, allowing parties to present their arguments and evidence. Unlike some jurisdictions, Nigeria does not use a jury system; judges are responsible for fact-finding, law interpretation and judgment.

The appointment of judges follows a structured process. Federal Judicial Officers, including the Chief Justice of Nigeria and Justices of the Supreme Court, are appointed by the President upon the recommendation of the National Judicial Council (NJC). The Chief Judge of a State High Court and other judges in the state are appointed by the State Governor, following the recommendation of the NJC.

Per section 14 of the 1999 Constitution, the judges' selection reflects Nigeria's federal character to promote national unity. The process ensures balanced representation across states and ethnic groups, upholding diversity, national unity and belonging.

Law stated - 30 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Civil claims have different time limits based on the type of action and relevant statutes. Some examples are listed below:

- tort: six years (Limitation Act 1966, section 7 (4));
- slander: three years (Limitation Act 1966, section 9);
- simple contract: six years (Limitation Act, section 7 (1) (a); Limitation Law of Lagos State 2015, section 8 (1) (a));
- a contract under seal: 12 years (Limitation Law of Lagos State 2015, section 12 (1) (a));
- recovery of land: 12 years (Limitation Act 1966, section 15); and
- actions against public officers: three months (Public Officers Protection Act, section 2(1) (a)).

Parties cannot suspend time limits; once the limitation period expires, the action is statute-barred. However, there is no limitation period for fundamental rights enforcement actions ([Fundamental Rights \(Enforcement Procedure\) Rules 2009](#), Order III Rule (1)).

Law stated - 30 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In Nigeria, different jurisdictions have specific pre-action steps that must be taken before initiating civil proceedings.

- In Lagos State, the claimant must provide a memorandum of claim to the potential defendant, including details of the claim and desired relief. If there is no response within a specified time, the claimant can proceed to litigation after demonstrating attempts at settlement.
- In the Federal Capital Territory (FCT), a certificate of pre-action counselling is required. This involves a lawyer discussing the merits and alternative dispute resolution options with the party.
- [Delta State's Administration of Civil Justice Law 2022](#) requires parties to take reasonable steps to resolve the dispute before initiating civil proceedings, which may include exchanging pre-litigation correspondence and considering alternative dispute resolution methods.
- The [Federal High Court Civil Procedure Rules 2019](#) require filing an affidavit to ensure no multiple actions on the same subject matter have been filed. Additionally, pre-action notices to government agencies may be required by certain enactments.

Law stated - 30 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings in Nigeria are initiated through four methods:

- writ of summons: used for disputes like breach of contract or tort cases;
- originating summons: used when interpreting documents or statutes;
- originating motion: used when there is a clear legal right and no substantial factual dispute; and
- petition: used in specific proceedings such as matrimonial causes, probate matters and insolvency cases.

After initiating the proceedings, the court's bailiffs or registrars serve the relevant documents on the parties according to the court's rules.

Efforts to address caseload and delay issues include the enactment of the Administration of Civil Justice Law in Delta State, promoting efficiency through pre-litigation requirements, active case management, alternative dispute resolution and electronic recording of court proceedings.

In Nigerian courts, initiating proceedings or issuing a claim indeed incurs a fee, the amount of which varies based on the court type and the nature of the proceedings. These fees are delineated in the Civil Procedure Rules of each court. Notable examples include Order 63 of the [High Court of the Federal Capital Territory, Abuja \(Civil Procedure\) Rules, 2025](#), and Order 55 of the [Federal High Court \(Civil Procedure\) Rules, 2019](#). These orders outline the fees associated with various procedural actions and are found in Appendix 2 to the FHC Rules and First Schedule to the High Court of FCT Rules. Thus, claimants must pay the prescribed fees to the court before their claims can be processed and adjudicated.

Law stated - 30 May 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

Civil proceedings in Nigeria adhere to a structured procedure outlined in the civil procedure rules of the respective courts. For example, in the [High Court of the Federal Capital Territory, Abuja \(Civil Procedure\) Rules, 2025](#), the general procedure includes:

-

service of originating process: the claimant serves the defendant with the initiating document, such as a writ of summons, originating summons, originating motion or petition, outlining the claim and relief sought;

- entry of appearance: the defendant enters an appearance within 21 days, indicating their intention to defend the claim; and
- statement of defence: the defendant files a statement of defence not later than 21 days after service on them of the originating process, responding to the claimant's allegations. The defendant can include a counterclaim with their defence.
- reply: in response to a defence, a claimant is permitted to submit a reply within 14 days following the service of the defence. Additionally, should there be a counterclaim, the claimant may file a defence to the counterclaim, which is governed by the same procedural rules that apply to the initial defence.

It is important to note that specific court rules, case nature and other factors can influence the procedure. Extensions of time may be granted by the court, and additional documents or evidence may be exchanged. Interlocutory applications, discovery of documents, pretrial conferences and a trial where both parties present their cases may also occur.

Law stated - 30 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties can challenge the court's jurisdiction at any point of proceedings. This is done in accordance with the relevant Civil Procedure Rules of the Court. Order 29 of the [Federal High Court \(Civil Procedure\) Rules 2019](#).

A challenge of a court's jurisdiction can be made by filing a Preliminary Objection stating why the Court lacks jurisdiction in the matter. A Preliminary objection takes the form of an Application, made up of a Motion, Affidavit and Written Address.

Parties can apply for anti-suit orders and Courts are generally empowered to grant injunctions in circumstances that appear to be just and convenient. Section 16 of the High Court Law of Lagos State and Section 15 of the [Federal High Court Act](#).

For instance, where there is an arbitration agreement, an anti-suit order will be granted in the form of a stay of proceedings unless the court finds that the arbitration agreement is void, inoperative or incapable of being performed. See section 5 of the [Arbitration and Mediation Act, 2023](#).

Law stated - 30 May 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

In Nigerian courts, civil proceedings are governed by the court's civil procedure rules, which outline the procedural steps and timelines for case progression. However, certain jurisdictions have implemented more flexible case management systems.

For example, the [Delta State Administration of Civil Justice Law 2022](#) introduces case management meetings, where the parties and the judge collaboratively develop a tailored procedural timetable. This timetable includes the main hearing track, application windows and an alternative dispute resolution (ADR) window.

Parties themselves do not possess the authority to extend time limits established by statute or civil procedure rules. Instead, only the court has the discretion to grant extensions of time. Such extensions are contingent upon a party submitting a persuasive application that sufficiently justifies the need for additional time. The court then evaluates the merits of the application based on the circumstances presented and the legal framework governing the proceedings.

Law stated - 30 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

While Nigerian law does not explicitly require parties to share all relevant documents, the principles of natural justice and fair hearing often impose the duty to disclose material facts for a balanced adjudication process.

However, attorney-client privileged communications are protected under section 195 of the [Evidence Act](#), which acknowledges the confidentiality between clients and their legal practitioners. Disclosure of such communications is limited to specific circumstances, such as when the client becomes a witness and the court deems it necessary to examine the communications.

If a party deliberately withholds evidence, section 167(d) of the Evidence Act allows the court to infer that the undisclosed evidence would be unfavourable to the party that withheld it.

Law stated - 30 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In Nigeria, certain documents are protected from disclosure during litigation under legal professional privilege. This includes confidential communication between a lawyer and client for seeking or providing legal advice (attorney-client privilege) and communication made for the purpose of pending or anticipated litigation (litigation privilege). Documents

containing legal advice, including those from external and in-house lawyers, are generally privileged. Privilege can be waived with client consent or if the communication was made for an illegal purpose. Privilege does not apply to documents that must be disclosed by law or court order.

Law stated - 30 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

In Nigerian civil litigation, the front-loading system is implemented, requiring parties to exchange written evidence, including witness statements and expert reports, prior to the trial. This promotes efficiency by presenting evidence upfront. However, witnesses, including experts, are still expected to attend the trial for cross-examination.

Law stated - 30 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In Nigerian trials, evidence is presented through written documents and oral testimonies. The front-loading system requires all evidence, including witness statements and expert reports, to be submitted in writing before the trial. Witnesses adopt their written statements as evidence-in-chief under oath. During the trial, witnesses are cross-examined based on their written statements, and expert witnesses provide written reports with their findings or opinions. Both witnesses and experts may be subject to cross-examination to clarify their evidence.

Law stated - 30 May 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies in Nigerian civil litigation can also be applied to foreign proceedings. If a party's assets are located in Nigeria, and there is a risk of non-compliance with a foreign judgment or order, these remedies can be particularly useful. Nigerian courts have the power to grant interim remedies in aid of foreign proceedings, allowing for the preservation of assets or the enforcement of foreign judgments. This provides a means for parties involved in foreign disputes to seek interim relief in Nigeria to protect their rights and interests. The granting of such remedies is subject to the court's discretion and the satisfaction of the necessary legal requirements.

Law stated - 30 May 2025

Remedies

14 | What substantive remedies are available?

Substantive remedies in Nigerian civil litigation include damages (monetary compensation), specific performance (fulfilling a specific act), injunctions (compelling or restraining actions), restitution (returning to a pre-harm position) and declaratory judgments (clarifying legal relationships). Interest on money judgments is at the court's discretion, with pre-judgment and post-judgment interest available.

Law stated - 30 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In Nigerian courts, while no specific written rules govern the settlement process, the civil procedure rules, such as Order 28 of the [High Court of the Federal Capital Territory, Abuja \(Civil Procedure\) Rules 2025](#), allow courts to give parties time for settlement discussions. Settlement talks can remain confidential; however, parties must file the final settlement terms with the court if they wish to enforce it as a consent judgment.

Law stated - 30 May 2025

Enforcement

16 | What means of enforcement are available?

Enforcing court orders in Nigeria involves mechanisms such as the writ of *fiery facias* for seizing and selling movable property, garnishee proceedings for seizing money or property owed by a third party, judgment summons for potential imprisonment of the judgment debtor and the writ of sequestration for taking control of the debtor's property. Contempt of court can lead to fines or imprisonment for non-compliance with court orders. (See the [Sheriffs and Civil Processes Act](#).)

Law stated - 30 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In Nigeria, court hearings are generally open to the public, except for cases involving national security, minors and sensitive family matters. Court documents, including pleadings and orders, are considered public records but may only offer restricted access. Access to court documents may require permission and could be limited or denied in cases involving minors, sensitive family matters or matters requiring confidentiality. Judgments and rulings are usually more accessible and may be published in law reports or made available on court websites.

Law stated - 30 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

In Nigerian civil litigation, courts have the discretion to award costs to the successful party to compensate for their legal expenses. The assessment of costs considers factors such as case complexity, parties' conduct and reasonable time spent. While security for costs is not generally required, it may be ordered in specific circumstances, such as when the claimant is a foreign entity. The Delta Administration of Civil Justice Law 2022 allows for the recovery of reasonable costs, which can be assessed by the court or taxed by a licensed dispute resolution institution.

The same cost rules generally apply across all civil claims. To protect their position on costs, a party can request that the court order the opposing party to provide security for costs. This can address concerns about the recoverability of costs should the opposing party fail to pay after a judgment. Additionally, cost issues can be raised and managed at any stage of the proceedings, as provided by Order 25 of the [Federal High Court Civil Procedure Rules 2019](#) and Order 49 of the [High Court of the Federal Capital Territory, Abuja \(Civil Procedure\) Rules 2025](#).

Law stated - 30 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

According to the [Rules of Professional Conduct for Legal Practitioners in Nigeria 2023-](#), lawyers are permitted to enter 'no win, no fee' agreements or other contingency or conditional fee arrangements with their clients. Rule 50 outlines the requirements for such agreements, emphasising reasonableness and considering the risk and uncertainty

involved in the case. It is important to note that these arrangements are prohibited in criminal cases.

Although the Rules of Professional Conduct for Legal Practitioners do not explicitly address third-party funding, Rule 50(3) prohibits lawyers from acquiring an interest in the litigation they are conducting. However, the Arbitration and Mediation Act 2023 provides exceptions to this rule. It states that the torts of maintenance and champerty, which traditionally restrict third-party funding, do not apply to arbitration in Nigeria (section 61). Therefore, third-party funding is permissible in arbitration proceedings.

While there are no explicit rules prohibiting a party from sharing its risk with a third party, it is important to note that lawyers cannot share their legal fees with anyone other than another lawyer, based on the division of service or responsibility. Any risk-sharing agreement must comply with this rule and should not involve the sharing of legal fees with a non-lawyer third party.

Law stated - 30 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance can provide coverage for all or a portion of a party's legal costs. However, it is essential to understand that the extent of coverage can vary depending on the specific insurance policy and the insurer. Certain legal proceedings may not be covered, and there could be exclusions, deductibles, or other terms and conditions outlined in the policy.

Law stated - 30 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under Nigerian law, mechanisms similar to class actions, referred to as representative actions, exist. [The Federal High Court \(Civil Procedure\) Rules 2019](#) specifically provide for representative actions in situations where multiple individuals share the same interest in a lawsuit. Order 9, Rule 12 governs representative actions in the Federal High Court. Other court rules have similar provisions.

Additionally, the 1999 Constitution allows for public interest litigation, particularly in environmental matters. This form of litigation enables individuals or groups to bring a lawsuit on behalf of a community whose environmental rights have been violated or are at risk of being violated.

It is important to note that while these mechanisms share similarities with class actions, they are not identical to those seen in jurisdictions like the United States. The practice of

representative actions in Nigeria is relatively uncommon, and the legal framework in this area is still developing.

Law stated - 30 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In Nigeria, parties involved in a legal dispute have the right to appeal a decision based on specific circumstances outlined in the 1999 Constitution. The grounds and circumstances for appeal differ depending on whether it is an appeal to the Court of Appeal or the Supreme Court, which are the main appellate courts in Nigeria.

For an appeal to the Court of Appeal (sections 240, 241, 242):

- parties have an automatic right to appeal to the Court of Appeal in cases involving final decisions in civil or criminal proceedings;
- appeals can be made on the grounds that involve questions of law alone, interpretation or application of the 1999 Constitution, contravention of provisions in Chapter IV of the 1999 Constitution, imposition of a death sentence in criminal proceedings, and certain specific cases, such as personal liberty, custody of an infant, injunctions, company matters, matrimonial causes and admiralty liability; and
- in other cases, parties need to obtain permission (leave) from the court of first instance or the Court of Appeal to appeal.

For an appeal to the Supreme Court (section 233):

- parties have an automatic right to appeal to the Supreme Court in cases involving grounds of appeal that pertain to questions of law alone, interpretation or application of the 1999 Constitution, contravention of provisions in Chapter IV of the 1999 Constitution, imposition or affirmation of a death sentence in criminal proceedings, and matters related to the election or tenure of high-level political positions;
- in other cases, parties need to obtain leave from the Court of Appeal or the Supreme Court to appeal; and
- the Court of Appeal is the final arbiter for election disputes from the National and State Houses of Assembly Election Tribunals, meaning the right of appeal ends with the Court of Appeal.

Once the Supreme Court has decided a case, there is no further right of appeal. The Supreme Court is the highest court in Nigeria, and its decisions are final.

Law stated - 30 May 2025

Foreign judgments

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23 | What procedures exist for recognition and enforcement of foreign judgments?

In Nigeria, the enforcement of foreign judgments is governed by two statutes: the Reciprocal Enforcement of Foreign Judgments Ordinance 1958 (the 1958 Ordinance), and the [Foreign Judgments \(Reciprocal Enforcement\) Act](#), Chapter F35, Laws of the Federation of Nigeria 2004 (the FJREA).

The 1958 Ordinance allows for the enforcement of judgments from the United Kingdom and other countries that were part of the British Empire when the law was enacted.

The FJREA was introduced to replace the 1958 Ordinance but has not been fully implemented. The Minister of Justice has not issued the necessary order recognising any country as a reciprocating territory under the FJREA. As a result, the FJREA is not currently utilised, and the 1958 Ordinance remains the primary legislation governing the enforcement of foreign judgments in Nigeria.

To enforce a foreign judgment, the judgment creditor must apply to a Nigerian High Court within six years of the date of the foreign judgment or the last judgment in any appeal proceedings. If the court determines that the foreign judgment meets the requirements of the relevant law, it will issue an order recognising the judgment, allowing for its enforcement in the same manner as a Nigerian court judgment.

If there is no reciprocal agreement between Nigeria and the country where the judgment was issued, the judgment cannot be directly enforced under the 1958 Ordinance or the FJREA. However, the judgment creditor may initiate a new lawsuit in Nigeria based on the foreign judgment, treating it as evidence of a debt owed by the judgment debtor.

Law stated - 30 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In Nigeria, the process of collecting evidence for civil cases taking place in other countries involves the use of 'letters rogatory' or 'letters of request' in accordance with the rules of certain Nigerian courts.

When a foreign court requires evidence from a witness residing in Nigeria, it can send a letter of request to a Nigerian court. This letter should specify the reasons why the evidence is necessary for the foreign court's case.

Upon receiving the letter of request, the Nigerian court has the authority to issue orders to facilitate the fulfilment of the request, provided that a duly authorised representative of the foreign court makes the request. This may involve summoning the witness to court, obtaining their statement or procuring relevant documents.

For instance, if a court in the United Kingdom requires a statement from an individual residing in Nigeria for a case in the United Kingdom, it can send a letter of request to a Nigerian court. The Nigerian court, upon satisfying itself that the request is genuine and

compliant with the law, can then direct the witness to provide the requested statement or documents.

Law stated - 30 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Yes, Nigeria's [Arbitration and Mediation Act 2023](#) (the AMA) is indeed based on the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration. This adoption provides a standardised, globally recognised framework for resolving international commercial disputes through arbitration in Nigeria.

Law stated - 30 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Under section 2 of the AMA, an arbitration agreement in Nigeria must be in writing. However, the AMA interprets 'in writing' broadly, allowing for various forms of satisfying the requirement:

- it can be a clause in a contract or a separate agreement;
- 'in writing' encompasses an agreement recorded in any recorded form, regardless of whether it was oral, by conduct or by other means;
- electronic communication is acceptable if the information is accessible and can be used for future reference;
- an exchange of claims and defences without denial constitutes a written agreement; and
- referring to a document with an arbitration clause is considered a written agreement if it is incorporated into the contract or agreement.

Law stated - 30 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The AMA provides the following rules for the appointment of arbitrators:

- sole arbitrator: if no agreement exists, a sole arbitrator will be appointed. If the parties cannot agree on the arbitrator within 30 days, an external appointing authority, arbitral institution or the court will make the appointment;
- three arbitrators: each party appoints one arbitrator, and the two appointed arbitrators then choose the third. If this does not happen within 30 days, an external entity will make the necessary appointment; and
- more than two disputing parties: if the parties fail to agree within 30 days that the disputing parties represent two separate sides for the formation of the arbitral tribunal as claimant and respondent, respectively, an external entity will appoint the tribunal.

Challenging the appointment of an arbitrator is only allowed if there are doubts about their impartiality, independence or qualifications. A party can challenge an arbitrator they appointed or participated in appointing, but only if the reasons for the challenge arose after the appointment.

Law stated - 30 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Arbitrator selection is a crucial aspect of the arbitration process. Factors to consider include:

- impartiality and independence: arbitrators should be unbiased and free from conflicts of interest;
- qualifications and expertise: arbitrators should possess the necessary skills, knowledge and experience relevant to the dispute;
- professional backgrounds: arbitrators can come from various fields, including law, engineering, finance, etc, depending on the nature of the dispute;
- pool size: arbitration institutions maintain a roster of arbitrators, offering a wide range of choices. The size of the pool can vary, and larger institutions tend to have more options available; and
- specific case considerations: the subject matter, legal systems involved, language and location of the arbitration can influence the selection criteria.

Parties have the freedom to agree on arbitrator qualifications in their arbitration agreement. When no agreement is reached, the institution or courts may appoint the arbitrator or arbitrators. The flexibility and availability of diverse candidates ensure suitable selections for complex arbitration cases.

Law stated - 30 May 2025

Arbitral procedure

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29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The AMA provides guidelines for the arbitration procedure while allowing flexibility for the parties involved:

- the parties can agree on the procedure to be followed by the arbitral tribunal. This can be stated in the arbitration agreement or decided upon after the dispute arises;
- if the parties have not agreed on a specific procedure, the default procedure will be the Arbitration Rules outlined in the First Schedule of the AMA; and
- if the agreed procedure or rules do not cover certain aspects of the arbitration, the arbitral tribunal has the power to manage the proceedings in line with section 30.

The arbitral tribunal has the authority to determine the admissibility, relevance, materiality and weight of any evidence presented during the proceedings.

Law stated - 30 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Section 64(1) of the AMA states that court intervention is permitted in specific instances set out in the AMA.

Before arbitral process:

- section 5 (1) of the AMA empowers the Court to stay proceedings and order parties to honour their arbitration agreement; and
- Section 16(1) of the AMA allows a party to apply to the Court to appoint an emergency arbitrator before the commencement of arbitral proceedings.

During arbitral process:

- section 19 of the AMA allows the Court to issue interim measures to protect arbitral proceedings; and
- section 43 of the Act empowers the Court to order the attendance of a witness before an arbitral tribunal.

Law stated - 30 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Under section 20 of the AMA, unless the parties have expressly agreed otherwise, arbitrators have the power to grant interim relief as requested by a party involved in the arbitration.

Interim relief can take various forms, as specified in section 20(2) of the AMA. It may include orders to maintain or restore the status quo during the dispute resolution process, measures to prevent actions that could cause harm or prejudice to the arbitral process, or steps to ensure the preservation of assets that may be required to satisfy a future award.

Law stated - 30 May 2025

Award

32 | When and in what form must the award be delivered?

Under the AMA, the award must be in written form and signed by the arbitrator or arbitrators. If there is more than one arbitrator, the signatures of the majority of the tribunal members are sufficient, along with an explanation for any omitted signatures.

The written award must include the reasons upon which it is based, unless the parties have agreed otherwise, or the award is based on agreed terms. The award should state the date it was made and the agreed or determined 'seat' of the arbitration, which is considered the place where the award was made.

Once the award is made, a signed copy should be delivered to each party unless there are specific provisions in the AMA that impact the delivery.

The AMA does not prescribe a specific timeframe for delivering the award, allowing for flexibility in determining the timeline for the issuance of the award.

Law stated - 30 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Arbitral awards cannot be appealed but can be challenged in courts based on grounds stipulated in sections 55(3) and (4) of the AMA. Grounds for challenge include:

- legal incapacity of a party to the arbitration agreement;
- invalidity of the arbitration agreement under the applicable law;
- inadequate notice of arbitrator appointment or arbitral proceedings, preventing a party from presenting its case;
- the award addresses disputes not included in or beyond the arbitration submission;
- improper composition of the tribunal or procedural non-compliance with the AMA or the arbitration agreement;
- non-arbitrability of the dispute subject matter;

- the award contravenes Nigerian public policy; and
- the challenge is filed after three months from receiving the award or following a decision on a request under section 49 of the AMA.

Law stated - 30 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The AMA, under section 57, states that an arbitral award, whether foreign or domestic, is to be recognised as binding. It will be enforced upon written application to the court, subject to the provisions of sections 57 and 58 of the AMA.

To rely on an award or apply for its enforcement, the party must provide the following:

- the original award or a certified copy of it;
- the original arbitration agreement or a certified copy of it; and
- if the award or arbitration agreement is not in English, a certified translation of it into English.

The Nigerian political landscape has not significantly affected the procedures for enforcing foreign and domestic arbitral awards.

Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, having acceded to it on 17 March 1970.

Law stated - 30 May 2025

Costs

35 | Can a successful party recover its costs?

Under section 50 of the AMA, a successful party in arbitration can recover various costs related to the proceedings. The AMA allows for a broad range of costs to be recoverable, ensuring that the successful party is reasonably compensated for the expenses incurred during the arbitration process.

Law stated - 30 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

In Nigeria, common Alternative Dispute Resolution (ADR) methods include mediation, conciliation, arbitration, early neutral evaluation, negotiation and adjudication. These methods offer flexible and efficient ways to resolve disputes outside of traditional litigation.

Law stated - 30 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In Nigeria, various jurisdictions have mandates to consider ADR methods before or during litigation or arbitration. These include the Delta State Administration of Civil Justice Law 2022, the Lagos State Pre-Action Protocols, the Federal Capital Territory High Court Civil Procedure Rules 2025 and the Rules of Professional Conduct for Legal Practitioners 2023. These mandates encourage the use of ADR as a primary means of resolving disputes, with litigation seen as a last resort. The specifics of how courts or tribunals can encourage ADR participation vary by jurisdiction and case circumstances.

Law stated - 30 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Other features of the Nigerian dispute resolution system include:

- customary arbitration: Nigeria recognises and enforces customary arbitration, which allows disputes to be resolved according to local customs and traditions, provided they adhere to principles of justice;
- public defender's office: some Nigerian states have established a Public Defender's Office to provide free legal aid to individuals who cannot afford legal representation, ensuring access to justice for all;
- multi-door courthouse (MDC): the MDC concept, first introduced in the Lagos High Court, offers a range of dispute resolution options within the same framework, including litigation, arbitration, mediation, negotiation and conciliation. This approach aims to streamline justice delivery and provide more satisfactory resolutions; and
- online dispute resolution (ODR): Nigeria is embracing ODR methods, utilising digital technology for case management and dispute resolution. This digital approach has proved valuable during challenging times, such as the covid-19 pandemic.

Law stated - 30 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In recent years, Nigeria has made significant strides in modernising its dispute resolution landscape through legislative and policy developments.

The enactment of the Arbitration and Mediation Act 2023, based on the 2006 amendment to the UNCITRAL Model Law on International Commercial Arbitration (1985), introduces key enhancements such as emergency arbitrators and an award review tribunal. The [Delta State Arbitration Law 2022](#), which repealed an outdated law, provides comprehensive guidelines on arbitration proceedings, including arbitrator duties, consolidation and third-party funding. These reforms align Nigeria with global best practices, improving the effectiveness and efficiency of dispute resolution in the country.

In a major policy leap, the [National Policy on Arbitration and ADR 2024](#) was approved by the Federal Executive Council on 15 July 2024. The National Policy on Arbitration and ADR, 2024 sets out a strategic framework for enhancing the effectiveness of arbitration in Nigeria. It directly tackles longstanding challenges such as delays in enforcement, unwarranted judicial interference and inconsistent arbitral practices. By promoting institutional strengthening, encouraging consistent judicial support and ensuring accountability among government agencies, the policy aims to position Nigeria as a credible and preferred seat for arbitration both regionally and globally.

Broderick Bozimo & Company has published a detailed review of the policy. The review focuses on what the policy says, what it leaves out and the choices ahead for government, courts and arbitration centres. The analysis can be accessed here: [Arbitration in Nigeria_A Handbook](#).

In the judiciary, the 2024 Supreme Court Rules brought a wave of modernisation to Nigeria's Apex Court.

Key reforms include mandatory e-filing via the National Case Management System, authorised virtual hearings and a new Case Scheduling and Management System to streamline proceedings. The Rules also shorten timelines for filing briefs and limit extensions, encouraging efficiency and reducing delays in the judicial process.

Law stated - 30 May 2025



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dispute resolution lawyers | since 1971

Isaiah Bozimo SAN
Daniel Ihueze
Afolasade Banjo
Folashade Dosunmu

isaiah@broderickbozimo.com
d.ihueze@broderickbozimo.com
a.banjo@broderickbozimo.com
f.dosunmu@broderickbozimo.com

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LITIGATION

Court system

1 | What is the structure of the civil court system?

At the first level are the municipal courts, with jurisdiction on matters not exceeding US\$5,000 and certain case-specific matters (eg, eviction proceedings). The municipal courts have jurisdiction over a municipality. Appeals against decisions of the municipal courts are heard by the circuit courts, where three circuit judges act as the appellate court, one of them serving as the main appellate judge.

Next are the circuit courts, with jurisdiction on matters exceeding US\$5,001 and certain case-specific matters (eg, oral proceedings related to challenges against resolutions of corporations and claims involving land). The circuit courts have jurisdiction over a province, except for the province of Panama, where three groups of circuit courts hold jurisdiction over a series of municipalities.

The provinces are distributed in what is known as judicial districts. For civil matters, the Republic of Panama has four judicial districts headed by a Superior Court: the First Judicial District, formed by the provinces of Panama, Colon, Darien, San Blas and Panama Oeste; the Second Judicial District, formed by the provinces of Coclé and Veraguas; the Third Judicial District, formed by the provinces of Chiriquí and Bocas del Toro; and the Fourth Judicial District, formed by the provinces of Los Santos and Herrera. Appeals against decisions of the circuit courts are heard by the Superior Courts or courts of appeal of the relevant province's judicial district.

The Superior Courts or courts of appeal generally serve as appellate courts for appeals against decisions of the circuit courts, as well as first instance courts for constitutional challenges against actions of public officials with jurisdiction over a province, and other matters. The Superior Court is composed of five magistrates for the First Judicial District and three magistrates for the other judicial districts. The magistrates act as an appellate court consisting of three magistrates, each alternating as the main magistrate on different cases, pursuant to case distribution rules.

Challenges against decisions of the Superior Courts are heard before the Civil Chamber of the Supreme Court of Justice, in particular, the writ of cassation. Three Supreme Court justices form the Civil Chamber.

Matters related to constitutional challenges are heard by the Plenary Assembly of the Supreme Court of Justice. The Supreme Court comprises nine justices overseeing four chambers, each chamber composed of three justices, namely the First Civil Chamber, the Second Chamber for criminal matters, the Third Chamber for administrative matters and labour litigation, and the Fourth Chamber for general matters.

Other special courts exist, such as the courts of commerce, composed of three (two active) circuit-level commercial courts of the first judicial circuit of Panama, and a Superior Commercial Court, part of the First Judicial District. In addition, special insolvency courts are to be incorporated into the civil court system, to eventually operate at the circuit court level, overseen by a Superior Insolvency Court, part of the First Judicial District. There are also two maritime courts with nationwide jurisdiction and a maritime court of appeals.

Law stated - 5 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In civil matters, the burden of proof is borne by the plaintiff. Therefore, the judge's role consists of verifying and analysing the evidence produced by the parties in the proceedings, and forming their own concept, based on personal knowledge and experience, the applicable law and principles, and the rules for admission of evidence. This process is known as critical analysis. When conducting this critical analysis, the judge can request the production of evidence, including the assistance of experts; however, this analysis cannot make up for or supplement deficiencies of the parties, in particular as it relates to the plaintiff's burden of proof duties. Juries are not involved in civil proceedings. Civil proceedings are mostly of a written nature.

Law stated - 5 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Different time limits apply depending on the nature of the claim.

The general time limit provided by the Civil Code for the filing of a personal claim for actions that do not have a particular time limit is seven years.

The general time limit for the filing of a claim for tortious damages is one year.

Real estate claims have a 15-year time limit.

The time limit for claims to seek payment of overdue leases is five years.

Claims to seek payment of civil services rendered by lawyers, notaries, experts, custodians, interpreters, arbitrators and services provided by pharmacists, medical doctors, engineers, chemists, teachers and professors, as well as lodging and food, and the sale of provisions to non-merchants or those merchants practising in another activity, are limited to two years.

It is not permitted for the parties to agree to suspend time limits; however, individuals with the capacity to dispose of assets can waive the acquired time limit.

The above are Civil Code-governed claims.

Note that civil proceedings also include claims governed by the Code of Commerce, where the default time limitation is five years.

Claims governed by the Code of Commerce subject to civil procedure include: claims for retail sales, claims for agents' wages, claims for transportation contracts, broker's liability claims and insurance claims where the time limitation is one year.

Claims related to corporations and the resulting relations and liabilities between shareholders or partners, as well as with regard to the company; liability of liquidators or managers of corporations; interest due on leases when charged yearly or for lesser periods; collection of negotiable instruments; wholesale activity; and financial leasing and banking facilities have a time limitation of three years.

Law stated - 5 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Considering the formal nature of civil proceedings, the plaintiff must verify that documents serving as evidence comply with the requirements of the governing law as well as for their admissibility (eg, signatures have been acknowledged before a notary, documents granted abroad have been legalised, documents have been signed by individuals with authority and certificates have been obtained within the legal timeline for their validity).

The plaintiff can try to secure or produce evidence that may otherwise not be available during the proceedings through prejudicial petitions that may include witness statements, inspections of places, objects or documents with the assistance of experts, special disclosure of accounting or financial records, and reports from private or public institutions. A security deposit (in the range of US\$100 to US\$1,000) for damages is generally required for the order to be effected.

A plaintiff can try to secure the claim through the prejudgment attachment of assets, such as cash in banks, movable assets, property recorded with the Public Registry, credits and inventories. A security bond for damages that may be caused, representing an estimated 25–40 per cent of the attachment amount or claim amount (the attachment amount cannot exceed the claim amount) is required in the form of cash deposited with the National Bank in the relevant court's account, insurance or bank guarantees, mortgages or public debt instruments; the amount is set by the court at its discretion. The prejudgment attachment is an ex parte application; once the order has been effected, the plaintiff must file the claim within the following six days and serve the defendant with proceedings within the following three months; otherwise, the claim may be dismissed.

Law stated - 5 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Proceedings commence through the filing of a claim. Once the claim is admitted, the court instructs service on the defendant. The defendant is personally served through the judiciary. If the defendant is a corporation, then its legal representative would have to take service.

If the defendant or its representative is not within Panamanian jurisdiction, letters rogatory must be sent to the foreign jurisdiction through diplomatic channels. The defendant must be provided with a copy of the claim and order of admission, and will be required to sign the order of admission. At such moment, the term for answering the claim shall commence. If the defendant cannot be located, an absentee party defendant shall be appointed.

The Panamanian judiciary's caseload is significant and the allocated budget is restricted, and as a result the progression of proceedings is slow.

There is no court cost for the initiation of proceedings.

Law stated - 5 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The timeline for an ordinary civil claim is as follows:

- filing the claim;
- answer to claim: to be filed within 10 days of service of the order of admission of claim;
- filing of evidence: takes place 15 days after the term for responding to the claim, and must be filed within the following five days;
- counter-evidence: must be filed within three days of the filing of evidence term;
- objections to evidence: must be filed within three days of the filing of counter-evidence term;
- taking of evidence: the court may set a calendar of up to 30 days. The order for taking of evidence may take an estimated one to two years or more;
- closing statements: filed within five days of the conclusion of the taking of evidence stage;
- decision: one to three years or more;
- appeal: to be taken three days after service, filed within the five following days; one to two years; and
- cassation: two to three years or more.

Law stated - 5 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties may challenge the court's jurisdiction, through special motions for lack of jurisdiction, which must be filed prior to the filing of the answer to the claim. Anti-suit orders are not available to parties.

Law stated - 5 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The duty to maintain the pace and progress of the proceeding falls on the judge. However, there are mechanisms that allow the parties to control certain aspects of the procedure and its timetable: the parties can agree to stay the terms of proceedings for periods of up to three months, and they can also ask the judge to eliminate, modify or have as effected certain parts of the procedure.

Parties may jointly petition the court to extend time limits in proceedings; the decision will be made by the court.

Law stated - 5 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Generally, no. Discovery is not available in civil proceedings.

Law stated - 5 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In principle, yes. The document would be protected by attorney–client privilege.

Law stated - 5 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

No. A party can try to secure evidence prior to the commencement of proceedings.

The timeline for an ordinary civil claim is as follows:



- filing the claim;
- answer to claim: to be filed within 10 days of service of the order of admission of claim;
- filing of evidence: takes place 15 days after the term for responding to the claim, and must be filed within the following five days;
- counter-evidence: must be filed within three days of the filing of evidence term;
- objections to evidence: must be filed within three days of the filing of counter-evidence term;
- taking of evidence: the court may set a calendar of up to 30 days. The order for taking of evidence may take an estimated one to two years or more;
- closing statements: filed within five days of the conclusion of the taking of evidence stage;
- decision: one to three years or more;
- appeal: to be taken three days after service, filed within the five following days; one to two years; and
- cassation: two to three years or more.

Law stated - 5 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Generally, evidence is submitted in the form of briefs together with evidentiary documents, either at the moment the claim is filed or answered, or during the stage of filing of evidence, counter-evidence and objections (this applies to ordinary or standard civil proceedings), or when filing or answering a motion. The briefs must contain the list of fact witnesses, the appointment of expert witnesses and the questions to be addressed by the expert witnesses. Witnesses can be interrogated and counter-interrogated by the parties, and the judge may also interrogate; expert witnesses are also interrogated on their findings and conclusions in a similar manner. The judge may order witnesses to face each other if they give contradictory answers.

Law stated - 5 May 2025

Interim remedies

13 | What interim remedies are available?

General injunctive remedies such as freezing injunctions are not available in civil proceedings.

Plaintiffs can seek prejudgment attachment of a defendant's assets.

Plaintiffs can also request the staying of negotiations or dealings whenever a real right (such as property) may be affected, subject to the consigning of security for damages with the court.

In connection with claims involving challenges against resolutions of a corporation, a staying order or freezing order is available provided the plaintiff files the claim within 30 days of the document being recorded with the Public Registry or, if the document was not recorded, from the moment the plaintiff learned of its existence.

Interim remedies are available in connection with foreign proceedings when the relevant decision is presented for acknowledgment and enforcement before the Fourth Chamber of the Supreme Court of Justice.

Law stated - 5 May 2025

Remedies

14 | What substantive remedies are available?

As a general rule, in addition to the proven claimed amount, the prevailing party is entitled to interest (at a default rate of 6 per cent per annum in civil matters and 10 per cent in commercial matters), litigation costs and expenses, as well as legal fees set in accordance to the Bar tariff, which considers the type of procedure and claim amount.

Moral damages (eg, emotional or reputational loss) are available in civil claims for damages.

Punitive damages are generally not available in civil proceedings. As exceptions, treble damages are available in consumer defence or action proceedings, as well as in the special procedure of international private law conflicts before the Panamanian courts, where the parties can request the application of foreign law indemnity rules.

Law stated - 5 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Parties may enter a judicial settlement, which must be verified and approved by the court. The settlement document must be personally presented by the parties or duly authenticated before a notary public.

Parties may also enter an out of court settlement, and jointly petition the court for the withdrawal of proceedings.

The court is not required to intervene in settlement discussions, which may be kept confidential.

Law stated - 5 May 2025

Enforcement

16 | What means of enforcement are available?

If a defendant does not comply with the final order within six days of receiving service, the plaintiff can commence special enforcement proceedings and request the post-judgment attachment of the defendant's assets.

In certain cases, the plaintiff can request that the defendant or a third party who fails to comply with or breaches an order of the judge be held in contempt. This may result in arrest and fines.

Law stated - 5 May 2025

Public access

17 | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Generally, yes. However, in oral proceedings, any of the parties may request that the hearing be held privately, for reasons of security, morality, decorum or public policy.

In addition to the parties, the case file documents are generally available to lawyers, paralegals and clerks, appointed experts and custodians, other court-appointed assistants, law students and those individuals authorised by the judge for purposes of research or education, as well as other individuals specially authorised by the judge.

There is no mechanism for the preservation of documents disclosed as part of the court process. However, depending on the type of documents (ie, commercial documents) the party may request these to be kept confidential from third parties.

Law stated - 5 May 2025

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Yes. As a general rule, the prevailing party is entitled to legal costs. Legal costs (or legal fees) are set by application of the Bar tariff, which generally considers the type of procedure and claim amount. In addition to legal costs, the prevailing party can seek payment of other expenses, such as expert fees, expenses for the reproduction of documents, certificates, fees charged by public institutions and other expenses related to the proceedings. The

judge can adjust or eliminate the application of legal costs and only order payment of expenses if he or she considers that the losing party litigated in good faith. Good faith cannot be considered to exist, inter alia, when a defendant fails to appear before the court despite having been served with proceedings; enforcement proceedings are required to seek performance of the judgment; the defendant denies evident statements that should have been accepted as true; false documents or witnesses are submitted; no evidence is filed to substantiate the facts of the claim or a motion; or a party abuses his or her litigation rights.

The plaintiff is not obligated to provide security for the defendant's costs.

The costs depend on the ruling and are set under the Bar tariff, therefore there are no available recourse to preemptively protect a position on costs.

Law stated - 5 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

This is a matter of private agreement between counsel and client. The above arrangements, although not customary in our system, should in principle be available.

Law stated - 5 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Not applicable.

Law stated - 5 May 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Yes. Class actions exist in connection with consumer protection claims. In addition, the Judicial Code has a special chapter on international private law conflict procedure, which allows the judge to group or consolidate actions whenever a great number of plaintiffs or defendants exist.

Law stated - 5 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Appeal is generally available against decisions or orders of the first instance judge. Generally, the appellant has three days after receiving service of the decision or judgment (two days if dealing with an order) to appeal against the adverse judgment. The brief of appeal must be filed before the first instance judge within five days, and the opposing party has the following five days to lodge its brief opposition. The first instance judge shall review the brief to confirm that appeal is available against the decision and that the appeal has been timely filed; in that case, the case file is sent to the Superior Court. The appellant can also request the taking of evidence in special circumstances, as part of the appeals procedure.

The extraordinary writ of cassation before the Civil Chamber of the Supreme Court of Justice is available, in special circumstances, against appellate court decisions. The writ of cassation deals with special and specific matters of procedure, application of the law and evaluation of evidence.

Law stated - 5 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Generally, a final foreign judgment will be recognised and enforced in the courts of Panama without retrial of the originating action by instituting exequatur proceedings before the Fourth Chamber of the Supreme Court of Justice of Panama.

For a writ of exequatur to be obtained from the Fourth Chamber of the Supreme Court of Justice, the following are required:

- The existence of a treaty or, in its absence, reciprocity. The principle of reciprocity provides that the country that issued the judgment would, in similar circumstances, recognise a final and conclusive judgment of the courts of Panama. Reciprocity is presumed to exist; therefore, if the opposing party (and, exceptionally, the Prosecution Office of the Attorney General) considers reciprocity is lacking, then such party must provide evidence within the course of exequatur proceedings.
- A judgment issued because of an action in personam. Actions in personam are the opposite of 'real' actions (ie, real estate property situated in Panama).
- Demonstrating the judgment was rendered after personal service has been effected on the defendant. When analysing the exequatur petition, the Fourth Chamber of the Supreme Court of Justice will look for confirmation of proper personal service of process effected on the defendant. The purpose of this requirement is to verify that the defendant had the opportunity to submit a defence against the claim, and

that, therefore, the principles of contradiction or bilateralism and due process were observed.

- That the cause of action upon which the judgment was based is lawful and does not contravene the public policy of Panama.
- Providing authentic copies of the documents evidencing the judgment, according to the law of the relevant foreign court and have been duly legalised by a Consul of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents.
- Providing translations of the copy of the final judgment (and complementary evidence) by a licensed translator in Panama.
- The judgment must be final and definitive, meaning that no other remedies (ie, appeals or other challenges) are available against the judgment.

Once the writ of exequatur has been obtained from the Fourth Chamber of the Supreme Court of Justice, the plaintiff must commence special executory proceedings before the civil courts to seek collection of the owed amounts.

Law stated - 5 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Foreign courts can request legal assistance from the Panamanian judiciary through letters rogatory, either through means of treaties or conventions or following principles of international comity. The petitions are channelled through the Fourth Chamber of the Supreme Court of Justice, which will review the application and, if granted, shall instruct the competent courts to take or instruct the production of the required evidence.

Law stated - 5 May 2025

ARBITRATION

UNCITRAL Model Law

- 25** | Is the arbitration law based on the UNCITRAL Model Law?

Generally, yes, with influence from the ICC Arbitration Rules, as well as the arbitration laws of other jurisdictions (Spain, France, Mexico and others).

Law stated - 5 May 2025

Arbitration agreements

|

26 | What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing. An arbitration agreement shall be considered to meet this requirement whenever evidence of its contents can be produced by any means. This includes electronic communications that can be accessed for eventual confirmation. The existence of a written form can also result from the exchange of briefs of claim and answer to the claim, whenever a party affirms its existence and the opposing party does not object, or by reference to an arbitration clause existing in a document that would apply to the relevant contract.

Law stated - 5 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Generally, the parties are free to appoint the number of arbitrators, provided the tribunal is composed of an odd number. If the parties cannot agree to the number of arbitrators, the dispute shall be decided by a sole arbitrator. If one of the parties is the state or a state entity, then the tribunal shall consist of three arbitrators.

If the arbitral tribunal is composed of three arbitrators, then each party appoints one arbitrator, and the appointed arbitrators then appoint the chair. If a party fails to appoint an arbitrator within the following 30 days of the last appointment of an arbitrator, or if within such term the arbitrators do not appoint the chair, then the appointment can be requested by any of the parties, from a national or international institution, pursuant to their respective rules.

An arbitrator can only be challenged in those circumstances when justified doubt exists regarding the arbitrator's impartiality or independence, when the arbitrator does not meet the qualifications agreed by the parties, or when the arbitrator does not meet the requirements of law (such as individuals who have been found to have seriously breached the code of ethics of an arbitral institution, or individuals declared criminally liable for fraud).

Law stated - 5 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The parties generally agree that each shall appoint one arbitrator. The chair may be appointed by the institution or the party-appointed arbitrators, depending on the arbitration agreement and applicable rules. The most active arbitral institutions have lists of arbitrators, for both domestic and international arbitration, from which the chair of the tribunal is appointed following the relevant institution's rules. The candidates are generally

experienced practitioners in their fields and have served as arbitrators, and include national as well as internationally renowned specialists.

Law stated - 5 May 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

The law on arbitration contains substantive provisions regulating matters such as the definition of domestic or international arbitration, matters that can be submitted to arbitration, the effects of the arbitration agreement, the default rule that arbitration shall be at law when the parties do not state the nature of the arbitration, and requirements for application for the annulment or enforcement of the award.

Law stated - 5 May 2025

Court powers to support the arbitral process

- 30** | What powers do national courts have to support the arbitral process before and during an arbitration?

The courts can intervene prior to the formation of the arbitral tribunal by providing interim relief or precautionary measures at the request of the plaintiff, or they can intervene at the request of the arbitral tribunal, for purposes of assisting the tribunal with interim relief or with the production of evidence.

Should a party file before a court a claim containing an arbitration clause, the court must decline the case in favour of arbitration.

Law stated - 5 May 2025

Interim relief

- 31** | Do arbitrators have powers to grant interim relief?

Yes.

Law stated - 5 May 2025

Award

- 32** | When and in what form must the award be delivered?

In domestic arbitration, the general rule is that the award must be delivered within two months of the filing of closing statements, and may be extended for an additional two months depending on the degree of complexity. In international arbitration, the award must be delivered within the term provided by the relevant rules, or as agreed by the parties or the arbitral tribunal.

Generally, the arbitration award must be in written form signed by the majority of the arbitrators. If there is no majority consent, then the chair can sign the award. The award must include the analysis and motivations (except as otherwise agreed by the parties) and the date and the seat of the arbitration. The award is served by the arbitral institution or the tribunal, as applicable, to the parties through delivery of a signed copy of the award. Generally, a single award is issued; however, multiple awards can also be issued, as may be agreed with the parties.

Law stated - 5 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Appeal is not available against the arbitral award. The award can be challenged through an annulment application filed before the Fourth Chamber of the Supreme Court of Justice, on the following grounds:

- one of the parties to the arbitration agreement was under some incapacity under the law applicable to it, or the agreement was not valid pursuant to the law to which the parties subjected it or, if no provision was made in this regard, pursuant to Panamanian law;
- the party against was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable, for whatever reason, to present its defence;
- the award deals with a dispute that was not contemplated by the arbitration agreement, or that did not fall within the terms of the submission to arbitration, or contains decisions that go beyond the scope of the arbitration clause or the submission to arbitration. However, if the provisions of the award that refer to the matters submitted to arbitration can be separated from those that have not been submitted to arbitration, the former may be recognised and enforced;
- the formation of the arbitral tribunal or the arbitral proceedings did not conform to the parties' agreement – except when such agreement breaches the arbitration law – or, in absence of an agreement, it did not conform to the arbitration law;
- the arbitration tribunal has ruled on a matter that could not be arbitrated; and
- the international arbitral award breaches international public policy, or in the case of a domestic award, that such award breaches Panamanian public policy.

Law stated - 5 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Foreign arbitral awards in Panama are recognised and enforced in accordance with:

- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);
- the Inter-American Convention of International Commercial Arbitration (Panama, 1975); or
- any other treaty ratified by the Republic of Panama on the recognition and enforcement of arbitral awards. The petition for recognition is filed before the Fourth Chamber of the Supreme Court of Justice of Panama.

Panama is a party to the New York Convention.

In the case of foreign awards where Panama served as the seat of arbitration, enforcement can be directly requested before the civil circuit courts through judgment enforcement proceedings.

Domestic awards are enforced through judgment enforcement proceedings before the civil circuit courts.

Law stated - 5 May 2025

Costs

35 | Can a successful party recover its costs?

Generally, yes. When filing closing statements, the parties are generally requested to submit a report on incurred costs, including legal expenses, expert fees, and arbitrator and services fees of the institution, as well as general expenses incurred during the arbitration, for evaluation by the arbitral tribunal and inclusion in the award.

Law stated - 5 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

The most commonly used alternative dispute resolution (ADR) processes are mediation and conciliation. ADR has still to gather momentum; it is generally conceived as a pre-arbitration or pre-litigation stage.

Law stated - 5 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In certain cases, the parties contractually agree to mandatory ADR prior to commencing arbitration. The arbitral tribunal may stay the arbitration and request the parties to submit to ADR in cases where the arbitration has commenced without the observance of this stage.

Law stated - 5 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Not applicable.

Law stated - 5 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

A new Code of Civil Procedure was approved by the National Assembly by means of Law 402 of 9 October 2023, and published in the Official Gazette on 11 October 2023. The basis of the new Code is the modernisation of the civil procedure system, favouring the use of orality in the central stages of the process which is expected to be streamlined and faster.

The new Code of Civil Procedure will enter into force throughout the national territory on October 2025.

Law stated - 5 May 2025



PATTON, MORENO & ASVAT
INTERNATIONAL LAWYERS

Khatiya Asvat
Joaquín De Obarrio

kasvat@pmalawyers.com
jdeobarrio@pmalawyers.com

Patton Moreno & Asvat

[Read more from this firm on Lexology](#)

Philippines

[Erica Christel Patino](#), [Maria Josefina M Concio](#), [Elmar B Galacio](#)

[Cruz Marcelo & Tenefrancia](#)

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ALTERNATIVE DISPUTE RESOLUTION

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The courts in the Philippines are generally subdivided into trial courts, the Court of Appeals and the Supreme Court.

Trial courts can either be metropolitan or municipal trial courts, which are first-level courts, or regional trial courts, which are second-level courts. They are assigned to their respective geographical locations. The jurisdiction of trial courts is distinguished by subject matter and amount or size of the claim involved. For instance, under the Judiciary Reorganization Act, as amended, civil actions involving a demand not exceeding 2 million pesos or actions involving title to or possession of real property where the value does not exceed 400,000 pesos are within the jurisdiction of the metropolitan or municipal trial courts. Those exceeding such amounts fall within the jurisdiction of the regional trial court.

In terms of subject matter, intra-corporate disputes, actions incapable of pecuniary estimation and family disputes, among others, are within the jurisdiction of the regional trial courts.

There are also specialised courts, which include the Sandiganbayan (on cases involving graft and corrupt practices committed by public officers or employees), the Court of Tax Appeals (on tax cases) and the Shari'a District Courts or Shari'a Circuit Courts (on Islamic laws governing Filipino Muslims).

Appeals from the trial courts are taken to the Court of Appeals and to the Supreme Court. While courts share concurrent jurisdiction on certain actions, litigants are generally required to observe the hierarchy of courts. This determines the venue of appeals and the appropriate forum for petitions involving extraordinary writs. Receiving and evaluating evidence are primary functions of trial courts, while more fundamental tasks are generally reserved for higher courts (*Gios-Samar, Inc. v DOTC, et al.*, G.R. No. 217158 (12 March 2019)).

One judge sits in trial courts. The Court of Appeals is composed of a presiding justice and 68 associate justices, sitting *en banc* or in 23 divisions of three justices each. The Supreme Court is composed of one Chief Justice and 14 associate Justices, sitting *en banc* or in three divisions with five members each.

Law stated - 2 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The role of the judge in civil proceedings is generally inquisitorial in nature. Judges are required to independently ascertain and assess the facts of the case in accordance with

their understanding of the law (New Code of Judicial Conduct). There is no jury system and decisions are rendered exclusively by the judge.

Under the Philippine Constitution, the Judicial and Bar Council has the principal function of nominating appointments to the judiciary and is guided by its mission to only recommend persons with proven competence, integrity, probity and independence. Diversity, however, is not among the primary standards in selection.

Law stated - 2 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Under the [Civil Code of the Philippines](#), some of the time limits to bring civil claims are:

- 30 years for an action based on an immovable property;
- 10 years, if based upon a mortgage, written contract, obligation created by law, or a judgment;
- eight years, if to recover movable properties;
- six years, if based upon an oral contract or a quasi-contract;
- five years on all other actions not fixed by law;
- four years, if based upon an injury to the rights of the plaintiff, a quasi-delict or if the action is to annul a voidable contract; and
- one year for an action based on forcible entry, unlawful detainer or defamation.

Other laws may also provide specific time limits to institute civil suits.

While parties cannot suspend time limits for bringing civil claims, a party may waive the defence of prescription. Notwithstanding this, prescription that is evident from the pleadings and the evidence on record may still be invoked even after rendition on the merits and even on the first time on appeal (*PNB v Tad-y*, G.R. No. 214588 (7 September 2022)).

Law stated - 2 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

There are pre-action considerations on certain civil suits that a party should take into account before initiating a case. One example is that a dispute is subject to Barangay Conciliation under the Revised Katarungang Pambarangay Law, which is a precondition before filing a complaint in court. Under the Rules of Court, the service of a demand letter to pay or comply with the conditions of the lease and to vacate is also a prerequisite in an action for unlawful detainer based on such considerations.

Law stated - 2 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Under the Rule of Court, civil actions are generally commenced by filing a complaint in the appropriate court. Unless the complaint is dismissible on its face, the court shall direct the issuance of summons attaching a copy of the complaint, and notifying the defendants of the proceedings, within five days from receipt of the initiatory pleading and proof of payment of the required filing fees.

The amount of the filing fees is determined by a schedule provided in the Rules of Court, which is based on the nature of the action or size of the claim, or both.

Summons will be served on the defendants personally or through substituted service. Substituted service, which allows leaving the summons with certain individuals with sufficient discretion other than the defendant, or sending the same by electronic mail, if allowed by the court, is only permitted if personal service has been unsuccessful for at least three attempts on two different dates.

Due to the heavy case load of courts and the limited process servers assigned in each court, the periods within which to complete the service of summons may vary. Recent revisions to the Rules of Court, however, have expanded the modes by which substituted service may be accomplished to expedite the commencement of proceedings.

Law stated - 2 May 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

Under the [Revised Rules of Civil Procedure](#), a civil action is commenced by filing a complaint. The defendant generally has 30 days after service of summons to file an answer unless a longer period is allowed under the rules for particular defendants, such as in the case of a foreign private juridical entity, or when the defendant's identity or whereabouts is unknown, or in the case of extraterritorial service of summons to a non-resident defendant.

The filing of a reply to an answer is only allowed if the defendant attaches an actionable document to their answer, in which case the plaintiff has 15 days from service to file such reply. If an actionable document is attached to the reply, the defendant can file a rejoinder.

A counterclaim is any claim a defendant has against the plaintiff, which may be compulsory or permissive in nature. On the other hand, a cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the

original action or of a counterclaim. Answers to a counterclaim or crossclaim must be filed within 20 days of service of the pleading responded.

Law stated - 2 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The absence of jurisdiction by the court may be raised at any time and is generally not lost or subject to waiver unless by a narrow exception, the litigant is barred by estoppel by laches (*Victoria Manufacturing Corporation Employees Union v Victoria Manufacturing Corporation*, G.R. 234446 (24 July 2019)). The lack of jurisdiction of the court may be raised in a motion to dismiss or as an affirmative defence in the defendant's answer.

There is no general rule governing applications for an anti-suit order. Under the Philippine Special Rules of Court on Alternative Dispute Resolution, an action filed in violation of an arbitration agreement may be stayed by the court upon the request of a party if the court finds prima facie, based on the pleadings and supporting documents submitted, that there is an arbitration agreement and that the subject matter of the dispute is capable of resolution by arbitration. The court shall then order or refer the parties to arbitration, which is immediately executory.

Law stated - 2 May 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The procedure and the timetable in ordinary civil proceedings are provided by the Rules and generally cannot be controlled by the parties. A motion for extension of time is considered a prohibited pleading except when expressly provided by the rules such as in the case of an answer where an extension of 30 days may be requested (section 11, Rule 11 of the Rules of Court).

Law stated - 2 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no provision under the Rules of Civil Procedure governing the duty of parties to preserve documents and other evidence pending trial.

During the pretrial conference, parties may be required to compare their exhibits with their originals and mark the same. Once these exhibits are permanently marked, the parties are generally no longer required to present the originals of the documents during trial. There are, however, certain cases when preserving the original exhibits is necessary. For instance, in cases involving forgery, the original document containing the alleged forged signature must be examined and presented for a definitive comparison that would establish forgery (*Heirs of Gregorio v Court of Appeals*, 360 Phil. 753 (29 December 1998)).

Under the Rules of Civil Procedure, there is likewise no rule requiring the parties to share relevant documents. Under the Revised Rules of Evidence, however, it is a disputable presumption that evidence wilfully suppressed would be adverse if produced.

Law stated - 2 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

All communications, whether verbal or written, ‘made by a client to his counsel, for the purpose of professional advice or assistance, are privileged, whether they relate to a suit pending or contemplated, or to any other matter proper for such advice or aid’. In *Regala v Sandiganbayan*, G.R. No. 105938 (20 September 1996), the Supreme Court of the Philippines ruled that even the identity of the client ‘is privileged where a strong probability exists that revealing the client’s name would implicate that client in the very activity for which he sought the lawyer’s advice’. The Supreme Court also reminded lawyers that attorney–client privilege ‘is not confined to verbal or written communications made by the client to the attorney. It also includes information communicated by the attorney to the client by actions, signs, or other means.’ In invoking this privilege, there is no distinction in whether the lawyer giving advice is local or foreign.

Law stated - 2 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Yes, the [Revised Rules of Civil Procedure](#) requires every pleading stating a party’s claims or defences to attach the Judicial Affidavits of the supporting witnesses, including the documentary and object evidence identified by them, in accordance with the Judicial Affidavit Rule. Thus, even in the initial exchange of complaint and answer, the evidence of the parties will generally be disclosed already.

Law stated - 2 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In civil cases, the parties are required to submit judicial affidavits of their witnesses, which shall take the place of the witnesses' direct testimonies in accordance with the Judicial Affidavit Rule (JAR). During the trial, the witnesses shall identify their Judicial Affidavits and affirm the same under oath in court. Thereafter, the adverse party shall have the right to cross-examine the witness on their judicial affidavit and on the documentary exhibits attached thereto. Redirect and re-cross-examinations thereafter follow where the witnesses give oral testimony.

In cases where the JAR cannot be applied, the witnesses give oral testimony during the entire examination.

Law stated - 2 May 2025

Interim remedies

13 | What interim remedies are available?

Under the [Revised Rules of Civil Procedure](#), provisional remedies that may be applied for include preliminary attachment, preliminary injunction, preliminary mandatory injunction, receivership, replevin and support *pendente lite*.

A preliminary attachment attaches property of the adverse party as security for the satisfaction of judgment. A preliminary injunction requires a party, court, agency or person to refrain from a particular act or acts. A preliminary mandatory injunction requires the performance of a particular act. Receivership appoints a receiver in certain cases to protect and preserve assets pending litigation. Replevin is applied for to preliminarily recover possession of personal property. Support *pendente lite* is to secure provisional payment or other forms of support pending litigation.

These remedies are generally applied for in support of proceedings already pending before local courts. Under the Alternative Dispute Resolution Act of 2004, however, Interim Measures of Protection may be applied for in support of arbitral proceedings yet to be initiated: (1) to prevent irreparable loss or injury; (2) to provide security for the performance of any obligation; (3) to produce or preserve any evidence; or (4) to compel any other appropriate act or omission.

Law stated - 2 May 2025

Remedies

14 | What substantive remedies are available?

Substantive remedies in civil cases may include the payment of damages that are: actual or compensatory; moral; nominal; temperate or moderate; liquidated; and exemplary or corrective (article 2197, Philippine Civil Code).

Under the Civil Code, actual damages are to compensate for pecuniary loss suffered by a party and requires proof. No proof of pecuniary loss is necessary, however, in order that moral, nominal, temperate, liquidated or exemplary damages be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case. Thus, on top of actual or compensatory damages, the payment of other punitive damages may be ordered by the court (article 2216, Philippine Civil Code). Attorney's fees and litigation expenses may also be recovered.

Interest may be imposed on money judgments. The Supreme Court in case of [Lara Gifts v Midtown Industrial Sales, Inc.](#) reiterated the principles applicable to the payment of interest on money judgments.

Law stated - 2 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Under the Rules of Civil Procedure and [A.M. No. 19-10-20-SC](#), the parties in civil cases are required to undergo Court-Annexed Mediation (CAM) after pretrial, where the mediator shall encourage the parties to enter into settlement. If the judge is still convinced that settlement is possible, the case may be referred to Judicial Dispute Resolution (JDR), which is mediation facilitated by a judge. CAM and JDR are confidential proceedings.

Law stated - 2 May 2025

Enforcement

- 16** | What means of enforcement are available?

Under the Rules of Civil Procedure, a writ of execution is applied to enforce judgment.

A judgment for money may be enforced by immediate payment on demand; satisfaction by levy; and garnishment of debts and credit. A judgment for a specific act may be enforced by:

- the conveyance of land or personal property, or delivery of deeds or other documents, or to perform any other specific act in connection therewith;
- the sale of real or personal property;
- the delivery or restitution of real property;
- the removal of improvements on property subject of execution; or
- the delivery of personal property. If the judgment requires the performance of any act that is not a judgment for money or for a specific act, it may be enforced by serving a certified copy of the judgment upon the party against whom the same is rendered (Rule 39 of the Rules of Court).

In instances when the order or judgment of the court is disobeyed, the person guilty of disobedience may be punished for contempt.

Law stated - 2 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Under Rule 135 of the Rules of Court, the hearing shall be public, but any court may, in its discretion, exclude the public when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency. The records of every court shall be public records and shall be available for the inspection of any interested person under the supervision of the clerk having custody thereof, unless the court shall forbid their publicity in the interest of morality or decency.

Under the Rule on Examination of a Child Witness, the court may also order the exclusion from the courtroom of all persons who do not have a direct interest in the case when a child testifies. Any record regarding a child shall also be considered confidential and kept under seal.

Law stated - 2 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

As a general rule, the costs of civil suit will be borne by each party. The complainant is not required to provide security for the defendant's costs in ordinary civil actions. However, courts have the discretion to rule that either party will pay the costs of litigation, or that these be divided between them, or make no pronouncement at all. As provided under the Civil Code, any ruling on expenses of litigation must in all cases be reasonable.

Law stated - 2 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

There are no specific rules under the Rules of Civil Procedure that govern funding arrangements in civil proceedings. Contingency fees between the parties and their lawyers or third-party funders or investors are subject to general limitations of contracts and the terms of their agreements, and the rules governing ethical standards of lawyers.

Law stated - 2 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

There is no specific prohibition in this regard. Liability insurance may be availed of by parties to cover their costs in litigation and shall be contractual in nature.

Law stated - 2 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under the Rules of Civil Procedure, a class suit is allowed when the subject matter of the controversy is one of common or general interest to many persons, the affected persons are so numerous that it is impracticable to join all as parties, and the parties bringing the suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

Law stated - 2 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal brings up for review errors of judgment committed by a court, or any error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. The right to appeal is not an absolute right but a mere statutory privilege and may be exercised only in the manner and in accordance with the procedure provided, otherwise, the court may deny the same (*Heirs of Garcia v Mun. of Iba Zambales*, G.R. No. 162217 (22 July 2015)).

Under the Rules of Civil Procedure, no appeal from the Regional Trial Court may be taken from an:

- order denying a motion for new trial or reconsideration;
- order denying a petition for relief or any similar motion;

- interlocutory order;
- order disallowing or dismissing an appeal;
- order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- order of execution;
- judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- order dismissing an action without prejudice (Rule 41, section 1, Rules of Court).

Law stated - 2 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The Rules of Civil Procedure govern the effect of a foreign judgment or final order of a tribunal of a foreign country (Rule 39, section 48).

Recognition of foreign judgments requires proof of fact of the judgment. A party may file a petition in court to recognise the fact of foreign judgment in accordance with the rules on evidence or it may even be proven in an existing special proceeding, such as in the case of cancellation or correction of entries in the civil registry (*Fujiki v Marinay*, G.R. No. 196049 (26 June 2013)).

Foreign judgments may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact. Additionally, the foreign judgment must be consistent with Philippine public policy and other mandatory laws for its effectivity (*Id*).

Law stated - 2 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

There is no specific procedure for obtaining oral or documentary evidence for use in ordinary civil proceedings in other jurisdictions. Under [A.M. No. 07-11-08-SC](#) or the Special ADR Rules, however, any party to an arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence.

Law stated - 2 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration law in the Philippines, is based, among others, on the UNCITRAL Model Law (Model Law). The [Alternative Dispute Resolution Act of 2004](#) specifically provides that international commercial arbitration in the Philippines shall be governed by the Model Law. Some provisions of the Model Law are also made applicable to Philippine domestic arbitration.

Law stated - 2 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Under the [Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004](#), the arbitration agreement must be in writing. It is considered in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication that provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement (article 4.7, Rule 2).

Law stated - 2 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Under the [Alternative Dispute Resolution Act of 2004](#), applying either the Model Law or Republic Act No. 876, otherwise, known as the Domestic Arbitration Law, the following rules govern.

- The parties are free to determine the number of arbitrators. In case they fail to make a determination, the default number of arbitrators shall be three.
- If the parties fail to agree on the procedure to appoint arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made by the appointing authority.

The right to challenge the appointment of an arbitrator generally arises if:

- circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence; or
- the arbitrator does not possess qualifications agreed to by the parties or provided under the rules.

Moreover, a party may challenge an arbitrator appointed by them, or in whose appointment they have participated, only for reasons of which they become aware of after the appointment has been made.

Law stated - 2 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

Under the [Alternative Dispute Resolution Act of 2004](#), the parties are free to agree on a procedure of appointing the arbitrators. However, no person shall be precluded by reason of their nationality from acting as an arbitrator, unless otherwise agreed by the parties.

Under section 10 of RA No. 876, the chosen arbitrator must be of legal age, in full enjoyment of their civil rights and knows how to read and write. Additionally, no person appointed to serve as an arbitrator shall be related by blood or marriage within the sixth degree to either party to the controversy. Neither shall a person serve as an arbitrator in any proceeding if they have or have had financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or have any personal bias, which might prejudice the right of any party to a fair and impartial award.

Law stated - 2 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Yes, the Alternative Dispute Resolution Act of 2004, its Implementing Rules and Regulations, [A.M. No. 07-11-08-SC](#), and RA No. 876 contain substantive requirements for the procedure to be followed in domestic and international commercial arbitration seated in the Philippines.

Law stated - 2 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Pursuant to A.M. No. 07-11-08-SC, local courts have the following powers to support the arbitral process:

- courts may stay the pending civil proceeding before it and refer the matter to arbitration upon request filed by a party (Rule 4.5);
- courts may issue interim measures of protection (Rule 5) before or during an arbitration; and
- at any time during the course of the arbitral proceedings, courts may be requested by a party to provide assistance in taking evidence (Rule 9).

Law stated - 2 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes, arbitrators have the power to grant interim reliefs for the following purposes:

- prevent irreparable loss or injury;
- provide security for the performance of an obligation;
- produce or preserve evidence or assets;
- compel any other appropriate act or omissions (Rule 5.4, special ADR rules);
- maintain or restore the status quo; or
- take action that would prevent or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process (article 17, Model Law).

The interim reliefs may include:

- preliminary injunction directed against a party to arbitration;
- appointment of receivers;
- detention, preservation, delivery or inspection of property subject of the dispute;
- assistance in the enforcement of an interim measure of protection granted by the arbitral tribunal (Rule 5.6, Special ADR Rules).

Law stated - 2 May 2025

Award

32 | When and in what form must the award be delivered?

Article 4.31 of the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004 requires that:

- the award be made in writing and signed by the arbitrators;

- the award state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms;
- the award state its date and the place of arbitration; and
- a copy signed by the arbitrators shall be delivered to each party.

Law stated - 2 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

For domestic arbitration, the award can be challenged by filing a petition to vacate the domestic award only on the following grounds (Rule 11.4, Special ADR Rules):

- the arbitral award was procured through corruption, fraud or other undue means;
- there was evident partiality or corruption in the arbitral tribunal or its members;
- the arbitral tribunal was guilty of misconduct or any form of misbehaviour that has materially prejudiced the rights of any party;
- one or more of the arbitrators was disqualified and wilfully refrained from disclosing such disqualification;
- the arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made;
- the arbitration agreement did not exist, or is invalid or unenforceable; or
- a party to arbitration is a minor or a person judicially declared to be incompetent.

The only grounds to set aside an award in an international commercial arbitration seated in the Philippines are (Rule 12.4, Special ADR Rules):

- the party making the application furnishes proof that:
 - a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law; or
 - a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case; or
 - the award 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 to arbitration; or
 - the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was not in accordance with Philippine law;
- the court finds that:
 -

the subject-matter of the dispute is not capable of settlement by arbitration under Philippine law; or

- the recognition or enforcement of the award would be contrary to public policy.

The foregoing grounds to set aside an international commercial arbitration award seated in the Philippines are the same limited grounds to refuse recognition and enforcement of a foreign arbitral award under Rule 13.4 of the Special ADR Rules.

Law stated - 2 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Enforcement of foreign arbitration awards in the Philippines is governed by A.M. No. 07-11-08-SC (Special ADR Rules) that essentially adopts the New York Convention to which the Philippines is a party.

For domestic arbitration, the prevailing party may file a petition to confirm the domestic arbitral award at any time after the lapse of 30 days from receipt of the arbitral award. The petition will be filed in the Regional Trial Court having jurisdiction over the place in which one of the parties is doing business, where any of the parties reside, or where arbitration proceedings were conducted (Rule 11, Special ADR Rules).

For an international commercial arbitration award in Philippine-seated arbitration, any may file, at any time from receipt of the award, a petition to recognise and enforce the arbitration award to the appropriate Regional Trial Court (Rule 12 of the Special ADR Rules).

Law stated - 2 May 2025

Costs

35 | Can a successful party recover its costs?

Under the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004, the arbitral tribunal shall fix the costs of arbitration in its award, which will only include:

- the fees of the tribunal;
- the travel and other expenses incurred by the arbitrators;
- the costs of expert advice and of other assistance required by the tribunal;
- the travel and other expenses of witnesses if approved by the tribunal;
- the reasonable costs for legal representation and assistance of the successful party if claimed during the arbitral proceedings; and

- any fees or expenses of the appointing authority.

Law stated - 2 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

Under the Alternative Dispute Resolution Act of 2004, ADR includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial or any combination thereof.

Mediation is the most used ADR process in the Philippines mainly in view of Court-Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR), which are conducted in accordance with the rules and under the auspices of the court.

Arbitration is likewise common in the Philippines. There are notable arbitral institutions, albeit ad hoc arbitration is also prevalent. [Executive Order No. 1008](#) gives the Construction Industry Arbitration Commission (CIAC) original and exclusive jurisdiction over all disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, when the parties have an arbitration agreement.

Law stated - 2 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Under the Revised Rules of Civil Procedure and [A.M. No. 19-10-20-SC](#), the parties in a civil case are mandated to undergo Court-Annexed Mediation (CAM) after pretrial. During the Court-Annexed Mediation (CAM), the mediator shall encourage the parties to enter into settlement. If the judge is convinced that settlement is still possible, the case may thereafter be referred to Judicial Dispute Resolution (JDR).

Before court action, the plaintiff, in some specified instances, is required to first undergo ADR proceedings (mainly conciliation) at the barangay level. Considering State policy in favour of ADR under the 2004 ADR Law, the parties are encouraged to consider ADR at any stage.

Law stated - 2 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

[Executive Order No. 1008](#) gives the Construction Industry Arbitration Commission (CIAC) original and exclusive jurisdiction over all disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, when the parties have an arbitration agreement.

Law stated - 2 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

There is an existing project to amend or revise the ADR Act. Especially in regard to arbitration, the ADR Act of 2004 is based on the 1985 version of the UNCITRAL Model Law and is yet to consider the 2006 UNCITRAL Model Law.

Law stated - 2 May 2025



Erica Christel Patino
Maria Josefina M Concio
Elmar B Galacio

es.patino@cruzmarcelo.com
 mj.concio@cruzmarcelo.com
 eb.galacio@cruzmarcelo.com

Cruz Marcelo & Tenefrancia

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The judicial system in the Kingdom of Saudi Arabia consists of several levels of courts, as outlined in article 9 of the Law of the Judiciary, and includes the following:

- Courts of First Instance, which include:
 - General Courts;
 - Criminal Courts;
 - Personal Status Courts;
 - Commercial Courts; and
 - Labour Courts;
- Courts of Appeal; and
- the Supreme Court.

Additionally, the judicial system includes the Board of Grievances as per article 8 of the Board of Grievances Law, which includes:

- Administrative Courts;
- Administrative Courts of Appeal; and
- the Administrative Supreme Court.

The Supreme Judicial Council and the Administrative Judiciary Council may establish other specialised courts with the approval of the King.

Law stated - 20 June 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The judge in Saudi courts is responsible for:

- hearing the case: the judge listens to the involved parties, examines the submissions, evidence and testimonies presented, and applies the laws and regulations in effect in the Kingdom; and
- issuing a judgment: based on what has been presented, the judge issues the final decision in the case in accordance with the applicable laws and regulations to resolve the disputed issues.

In the Saudi judicial system, there is no jury; all decisions are made solely by judges.

Law stated - 20 June 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

There are several time limits for filing civil claims, which vary depending on the type of claim and the relevant legal framework. Some of these time limits are summarised below. However, exceptions exist in cases where the defendant concedes the right; where the claimant brought a legal claim in time but before a court with the wrong jurisdiction; or other legal action was taken by the creditor to assert their right; or the court accepts the excuse or reason that the claimant cites for being unable to bring their claim within the limitation period.

Civil Transactions Law

- Contract annulment: a claim for annulment of a contract cannot be heard if one year has passed from the date the party became aware of the reason for annulment (article 79).
- Nullity: a claim for nullity cannot be heard if 10 years have passed from the date of contracting (article 81).
- Compensation for tortious acts: a claim for compensation arising from a tort cannot be heard if three years have passed from the date the harmed party became aware of the damage, and in all cases, the claim cannot be heard after 10 years from the date the damage occurred (article 143).
- Unjust enrichment: a claim for unjust enrichment cannot be heard if three years have passed from the date the creditor became aware of the right, and the claim cannot be heard after 10 years from the date the right arose (article 159).
- Non-enforceability of a transaction: a claim for non-enforceability of a transaction cannot be heard if one year has passed from the date the creditor became aware of the non-enforceability (article 188).
- Other rights: there are other time limits for specific rights, such as 10 years for claims related to the work of professionals like doctors and lawyers, as well as claims involving tenants (articles 196 and 197).

Commercial Courts Law

- Claims heard by the commercial courts cannot be filed after five years from the date the right arose (article 24 of the Commercial Courts Law).
- In accordance with the Executive Regulations of the Commercial Courts Law, if the right being claimed arose before the law came into force, the time limit under article 24 of the law is calculated from the date the law came into force. This means the five-year limitation period for rights that arose prior to the Commercial Courts Law came into force has already passed, in April 2025.

Law stated - 20 June 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Notices: in certain commercial cases, the claimant must notify the defendant in writing to fulfil the claimed right at least 15 days before filing the lawsuit. This applies to cases that require such notification under the regulations (article 19 of the Law). However, notification is not required in the following cases, as per article 69 of the Executive Regulations:

- cases related to penalties stipulated in commercial laws;
- cases in which a government entity is a party;
- cases where specific procedural rules for filing lawsuits are established under special legal provisions;
- low claims; and
- urgent requests.

Reconciliation and mediation: reconciliation and mediation must be pursued before filing certain lawsuits, as stipulated in article 58 of the Executive Regulations, including:

- disputes arising between merchants due to their principal or ancillary commercial activities with a value that does not exceed 1 million riyals;
- lawsuits filed against merchants in disputes related to commercial contracts (article 16 of the Law) with a value that does not exceed 1 million riyals;
- disputes arising from partnership contracts under the CTL; and
- disputes arising from contracts in which the parties have agreed to have recourse to reconciliation prior to commencing court proceedings.

Law stated - 20 June 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings in Saudi courts are initiated by filing a lawsuit through the Najiz platform, which involves registering the parties' information, specifying the subject and classification of the case, stating the claims and attaching the relevant documents.

When the case is referred from the auditing department to the court, the parties are officially notified via text messages sent by the Ministry of Justice. These messages contain important details, including the parties involved, the case number, the hearing date and

the time at which it will be held. Additionally, parties can verify the status of the case and receive updates through the Najiz platform, which provides periodic information related to the case.

The courts have the capacity to manage their caseload effectively due to available resources, including a sufficient number of judges and staff. Additionally, all transactions are now conducted electronically, which streamlines case management, enhances efficiency and speeds up the adjudication process.

In general, judicial fees apply to all claims and requests submitted to the courts, amounting to no more than 5 per cent of the claim value, with a maximum cap of 1 million riyals (article 3 of the Judicial Fees Law).

However, certain cases are exempt from these fees under article 2 of the law, including:

- public criminal cases, disciplinary cases and related requests;
- cases and requests under the jurisdiction of the Personal Status Courts (except for cassation and reconsideration requests);
- inheritance division cases (except for cassation and reconsideration requests);
- cases and requests arising from the application of the Bankruptcy Law; and
- certifications and related requests.

Judicial fees for claims are assessed as follows under article 2 of the Implementing Regulations:

- 5 per cent for claims below 100,000 riyals;
- 4 per cent for claims between 100,000 and 500,000 riyals;
- 3 per cent for claims between 500,000 and 1,000,000 riyals; and
- 2 per cent for claims above 1,000,000 riyals.

These fees are generally charged at the end of the dispute, on the losing party; however, this is not always the case. Article 13 of the Judicial Fees Law provides that the party against whom judgment is issued shall bear the judicial fees, in whole or in part, unless otherwise stipulated by the law or its implementing regulations. Further, if the claimant is unsuccessful in part of their claims, they shall bear the fees corresponding to that portion.

Additionally, fees of up to 10,000 riyals apply to the following requests under article 7 of the law:

- appeal, cassation and reconsideration requests;
- incidental requests and joinder of parties requests;
- requests for recusation and requests to resume a suspended case by agreement;
- requests for correction or interpretation of a judgment; and
- other requests specified by the regulations.

Law stated - 20 June 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

A civil claim goes through several stages, starting with electronic filing through the Najiz platform, followed by referral to the Audit Department and then to the Circuit. The parties are then notified, and hearings are scheduled accordingly. The timeline for each stage may vary depending on the complexity of the case, generally ranging from several weeks to a year. If needed, the parties have the option to appeal within a specific time frame set by law.

Law stated - 20 June 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The defendant can challenge the court's jurisdiction if they believe that the court does not have the legal authority to hear the case at any stage of the pleading. The court may also decide on its lack of jurisdiction on its own, even if the defendant does not raise this issue, in accordance with article 76 of the Civil Procedure Law.

The defendant can raise this challenge by submitting a submission to the court in response to the plaintiff's statement of claim. In this submission, the defendant presents legal arguments to challenge the court's jurisdiction.

In the Saudi judicial system, an 'anti-suit order' is not recognised or commonly applied. However, there may be situations where the court needs to determine jurisdiction, especially if there is a parallel case in another court, either within the Kingdom or abroad. In such cases, the Saudi judicial system focuses on determining the competent court to hear the case, and the court may issue a judgment of inadmissibility if it finds that it is not legally competent to hear the case.

Law stated - 20 June 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties do not have full control over the case proceedings, as the courts follow specific procedures in accordance with the law and regulations. However, pursuant to article 6 of the Commercial Courts Law, parties to a commercial dispute – provided that both are merchants – may agree on specific procedures related to litigation.

Such agreements, however, must not conflict with public order or mandatory legal provisions. For example, the parties may not agree to extend the maximum period for

adjudicating a case as stipulated in article 38 of the Executive Regulations (such as the 180-day limit for cases before the court of first instance). Nonetheless, it is understood from the relevant provisions that the parties may agree to shorten this period, provided that such agreement does not undermine public order or the guarantees of due process.

The parties may also agree on other procedural aspects, such as the method of submitting briefs, submission deadlines, the nature of hearings (written or oral), scheduling and means of notification.

It is also worth noting that article 74/2 of the Commercial Courts Law allows the parties to agree that the initial judgment shall be final, thereby waiving the right to appeal.

The parties can request extensions for time limits. However, this is at the discretion of the court, which may grant an extension if there are valid reasons, such as the need for additional time to submit a response, present evidence or summon witnesses.

Law stated - 20 June 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no express duty to preserve documents or evidence pending trial.

The exchange of documents between the parties is a fundamental aspect of the lawsuit, as all documents attached in the Najiz system will be available for the parties to review and respond to, unless the court determines otherwise. This ensures transparency and the parties' rights to access all relevant documents.

In commercial disputes, a party may submit a request to maintain the confidentiality of a specific document, provided that the reason for confidentiality is clearly stated, in accordance with article 13 of the Commercial Courts Law.

Parties are not required to submit documents that are unhelpful to their case. However, a party is entitled to request that the court order the counter-party to disclose certain documents that they believe to be helpful to their case, as long as they can identify such documents with sufficient specificity (article 46 Commercial Courts Law).

Law stated - 20 June 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Although the term 'legal privilege' is not commonly recognised in the Saudi judicial system in the same manner as in some other legal systems, communications between a lawyer and their client, legal consultations provided to the client and any related data or information are considered confidential and must not be disclosed, in accordance with Rules 21 and

28 of the Professional Code of Conduct for Lawyers. However, disclosure to the competent authorities is permitted in the cases specified in Rule 21, which include:

- preventing the commission of a crime;
- suspecting a money laundering or terrorist financing offence;
- what is necessary for the lawyer's defence against any claim or complaint;
- the client's written consent to disclosure; and
- a statutory provision or judicial order requiring disclosure.

Law stated - 20 June 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Civil proceedings in Saudi Arabia are run as a series of hearings, in which written submissions are filed until it is determined that both parties have completed their submissions, and the court then closes advocacy in order to make its decision. The process does not culminate in a single 'trial hearing'. During the submissions phase, parties should share such witness evidence or expert evidence that supports their case.

Law stated - 20 June 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The presentation of evidence varies depending on its type. For documentary evidence, it can be easily exchanged by uploading it to the Najiz system. As for audio evidence, it is uploaded as audio files and submitted to the court through the available means.

Regarding experts, a report must be submitted to the court, which should include the following points according to article 117 of the Evidence Law:

- a statement of the task assigned according to the appointment decision;
- a detailed description of the work completed, including statements from the parties and others, along with any documents and evidence presented, and the technical analysis of them;
- opinions of any experts consulted;
- the outcome of the work and the expert's opinion, clearly and precisely outlining the reasons behind it; and
- if there are multiple experts, they must prepare a single report. In the case of differing opinions, each expert should include their view and the reasons for it in the report.

As for witnesses, they give their testimony orally before the court. If this is not possible, the court may either relocate or assign one of its judges to handle the matter. If a witness resides outside the court's jurisdiction, and it is not possible to conduct electronic evidence procedures, the court must use the competent court at the witness's place of residence, notifying the substitute court.

Law stated - 20 June 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies according to the Civil Procedure Law include:

- precautionary and provisional measures: as outlined in the executive regulation of the Civil Procedure Law, precautionary measures are actions taken to protect a right or asset, while provisional measures are applied in urgent situations, remaining in effect until a final ruling is issued in the original lawsuit (article 29/2);
- competent court: only the court competent to handle the case may impose precautionary or provisional measures, provided the original lawsuit has been filed within the Kingdom (article 29/3); and
- conditions for taking measures: a request for precautionary or provisional measures must be made by the court considering the original case or by one of the parties involved. The existence of the original case must be proven, and the original lawsuit must comply with Islamic law (article 29/4).

Interim remedies according to the Enforcement Law include the following.

- Precautionary attachment.
 - On movables: the creditor may request precautionary attachment on the debtor's movable assets in certain circumstances, such as when the debtor does not have a fixed residence or if there is a concern that the debtor's assets may be concealed (article 24).
 - On movables in leased property: the lessor may request precautionary attachment on movable property or products within leased premises to secure outstanding rent (article 25).
 - On debts and assets held by third parties: the creditor may request precautionary attachment on debts or assets the debtor holds with third parties, even if those debts are deferred or conditional (article 27).
- Conditions and procedures.
 - Court request: precautionary attachment may only be imposed on an evident and due right. The attachment can only be executed through an order from the court or the competent authority handling the dispute within the jurisdiction where the debtor resides. Before issuing the order, the court or

authority may investigate if the supporting documents for the attachment request are insufficient (articles 28–29).

- **Proof of right:** the person requesting the attachment must file a lawsuit before the court or competent authority within 10 days from the date of the precautionary attachment order to prove the right and the validity of the attachment. If the lawsuit is not filed within this period, the attachment will be considered null and void (article 31).
- **Declaration:** the person requesting the attachment must submit a notarised written declaration from a capable guarantor or provide a guarantee to ensure the rights of the person whose assets are attached, in case it is later determined that the attachment request was unjustified (article 32).

Law stated - 20 June 2025

Remedies

14 | What substantive remedies are available?

Contract termination due to breach of obligation:

- In bilateral binding contracts, if one party fails to fulfil their obligation, the other party, after warning the breaching party, has the right to request either the performance of the contract or its termination, with entitlement to compensation if justified. The court may refuse the termination request if the breach concerns a minor and non-essential part of the obligation.
- It is permissible to agree that the creditor has the right to terminate the contract upon the debtor's breach of obligations without the need for a court ruling. However, this agreement does not exempt from the warning requirement unless explicitly agreed otherwise by the parties.

This is in accordance with articles 107–108 of the CTL.

Monetary compensation:

- Compensation aims to fully redress the harm by restoring the injured party to the position they were in prior to the occurrence of the damage. This includes compensation for actual financial losses, loss of profits and moral (non-material) damages.
- The court may determine the amount of compensation, which may be awarded in cash, in kind, or through restitution, depending on what the court considers appropriate.
- To be entitled to compensation, the injured party must prove the existence of fault, damage and a causal link between them, in accordance with articles 136–143 of the Civil Transactions Law.

Specific performance:

- The debtor is obligated to perform their obligation directly after being warned, unless such performance causes undue hardship to the debtor. In that case, the court may, upon the debtor's request, limit the creditor's right to compensation, provided that the creditor does not suffer substantial harm.
- If the obligation concerns a specific type of thing rather than a particular item, the creditor may obtain an item of the same type at the debtor's expense, with the court's permission or without it in urgent cases, without prejudice to the creditor's right to compensation.
- For obligations involving the transfer of a real right, the debtor must deliver and preserve the item until delivery, bearing responsibility for any loss or damage if delivery is not made.
- In the case of an obligation to perform work, the debtor must execute it personally if stipulated in the agreement or required by the nature of the work. The creditor may request the court's permission to perform the obligation at the debtor's expense or do so directly in urgent cases. A court judgment may also substitute for the performance if the nature of the obligation requires it.
- If the obligation requires preserving or managing the item, exercising the care of an ordinary person suffices, unless a legal provision states otherwise. However, if the obligation is to achieve a specific purpose, performance is only considered complete when that purpose is fulfilled.
- If the debtor breaches an obligation to refrain from an act, the creditor may request removal of the breach along with compensation if justified and may seek the court's permission to carry out such removal at the debtor's expense.

These provisions are in accordance with articles (164–169) of the Civil Transactions Law.

Law stated - 20 June 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The formal reconciliation process is regulated according to the Rules of Reconciliation Offices and Procedures, issued on 29/11/1440H, corresponding to 1/8/2019G. This process is overseen by the Reconciliation Center, an entity affiliated with the Ministry of Justice, which provides its services through the Taradhi platform. This digital platform helps facilitate structured dispute resolution, allowing the parties to reach amicable settlements efficiently.

It is worth noting that the confidentiality protection mentioned above applies to formal reconciliation procedures conducted through the Reconciliation Center. In contrast, negotiations or settlements conducted outside this framework such as direct discussions between the parties or through their legal representatives – are not governed by any explicit legal provision that ensures the same level of confidentiality.

In the absence of specific regulations governing out-of-centre settlements, it is strongly recommended that the parties sign a written confidentiality agreement prior to commencing such negotiations. This helps ensure the protection of the content discussed and prevents its potential use as evidence in subsequent legal proceedings.

Reference may also be made to Chapter Five (articles 391–402) of the Civil Transactions Law, which governs conciliation contracts. For example, article 391 defines conciliation as: 'Conciliation is a contract by which the parties settle an existing dispute or prevent a potential one, by each party making reciprocal concessions regarding their claims or part thereof'.

Article 401 affirms that conciliation extinguishes the rights and claims waived by the parties, and the agreement becomes final and irrevocable for them and their heirs. Article 400 further clarifies that any waivers in a conciliation agreement must be narrowly interpreted and limited strictly to the rights that were the subject of the dispute.

Moreover, article 396 provides that conciliation remains valid whether the defendant admits, denies or remains silent about the claim. This indicates that the validity of a conciliation agreement is not contingent on acknowledgement of the underlying claim. Therefore, participating in settlement negotiations does not in itself amount to a legal admission, unless the court finds otherwise based on the context.

Additionally, article 11 of the Law of Evidence stipulates that evidentiary procedures — such as admissions, interrogations, testimonies or oaths — must be conducted before the judiciary. This strengthens legal safeguards and reduces the likelihood that informal statements made during negotiations could be treated as admissible evidence in court.

Accordingly, negotiations conducted outside the Reconciliation Center do not automatically benefit from legal confidentiality protections.

However, it is unclear whether the same protection and confidentiality provided by the Conciliation Rules apply to settlement discussions conducted outside the Conciliation Center. Therefore, some parties resort to conciliation without admission as a means of settling the dispute without acknowledging the facts.

Law stated - 20 June 2025

Enforcement

16 | What means of enforcement are available?

Disclosure of assets: the enforcement judge may issue an order for the disclosure of the debtor's assets to the extent necessary to satisfy the enforceable instrument. They may issue an order for disclosure and attachment of assets after informing the debtor, or even before informing them if the debtor is deemed to be delaying, based on their credit record or circumstantial evidence (article 16).

Provisional attachment: the creditor may request a provisional attachment of the debtor's movable property or other assets in cases such as the debtor not having a fixed place of residence, or if there is a concern that the debtor may hide or transfer assets. Provisional

attachment requires a court order and follows specific procedures, including investigations if necessary (articles 23–29).

Executive attachment: executive attachment can be carried out on the debtor's movable or immovable assets based on the enforcement judge's order. The procedures include attaching the assets at the specified location and depositing them into the court's account (articles 35–39).

Actions against delay by the debtor: if the debtor does not disclose their assets or fails to execute the ruling within five days of being informed, the enforcement judge may take actions such as:

- preventing the debtor from traveling;
- halting the issuance of power of attorney from the debtor, directly or indirectly, on their assets or those that belong to them;
- requiring the disclosure of the debtor's existing assets and any future assets that may satisfy the enforceable instrument and attachment and execution on them according to the provisions of this system;
- requiring the disclosure of the debtor's commercial and professional activity licences and records; and
- notifying the authorised entity for credit information recording about the failure to execute the judgment.

The enforcement judge may also take additional actions as appropriate, including:

- preventing government entities from dealing with the debtor and attaching their financial dues with them, and notifying the enforcement judge;
- preventing financial institutions from dealing with them in any capacity;
- ordering the disclosure of the debtor's spouse's and children's assets, or any individuals believed to have received transferred assets or been favoured by the debtor. If there are indications of asset concealment, the request may be referred to the judge for consideration; and
- imprisoning the debtor in accordance with the provisions of this law.

Interrogation of the debtor: the judge has the authority to interrogate the debtor, their accountant, employees or associates suspected of favouring them or the debtor's debtor to trace their assets. They may appoint an expert to trace the assets (article 47).

Attachment of assets in financial institutions: the enforcement judge may issue an order to attach the debtor's dues in their bank accounts or investments in financial institutions. This includes attaching cash balances, deposits and ownership shares in companies (articles 60–65).

Attachment of intellectual property: intellectual property can be attached through the relevant registration authority, including marking the official record (article 64).

Direct enforcement: if the debtor fails to fulfil their obligations within five days of being instructed, the enforcement judge may use appropriate force, such as by means of the police, to implement the judgment (article 68).

Executive imprisonment: the enforcement judge may issue a ruling to imprison the debtor if it is proven that they are refusing to execute the judgment, and the imprisonment will continue until the debtor complies (article 83).

Law stated - 20 June 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

The default rule in the Saudi judicial system is that court hearings are public. The law stipulates that hearings should be conducted openly, allowing public attendance, in accordance with the Civil Procedures Law, the Commercial Courts Law and other regulations (article 64 and article 164 of the Civil Procedures Law; article 13 of the Commercial Courts Law).

In general, some court documents, such as commercial case records and related documents, may be available to the public for a fee covering the cost of the service. However, access to certain documents may be restricted to the parties involved or other authorised individuals to protect their rights or maintain confidentiality in specific cases. Additionally, a party involved in the case may be denied access to certain documents if the court deems them confidential.

Under article 64 of the Civil Procedures Law, hearings may be held in private if the judge – either on their own initiative or at the request of one of the parties – deems it necessary to maintain public order, uphold public morals or protect family privacy. However, as previously mentioned, the general principle remains that hearings are public.

Documents are electronically submitted and stored via the Najiz system, ensuring secure and reliable preservation. This system allows relevant parties to access case-related documents electronically, safeguarding evidence and preventing loss or tampering during legal proceedings.

Law stated - 20 June 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Legal fees fall under the category of compensation for damages according to the applicable laws. Article 73/3 of the Civil Procedure Law states: 'The court that issued the judgment shall consider the claim for compensation for damages resulting from delay in fulfilling the rights subject to the lawsuit'. Similarly, article 16/9 of the Commercial Courts Law provides:

'Claims for compensation for damages arising from a case previously adjudicated by the court'.

Islamic jurisprudence scholars have also ruled that among the litigation expenses, the party who causes delay (the dilatory party) should compensate for the losses incurred due to the necessity of filing the claim to obtain the right (Fatawa of Sheikh al-Islam Ibn Taymiyyah 30/25, and Kashaf al-Qina' 3/419).

To obtain the claimed compensation amount, the attorney's contract must be submitted, and it is recommended to provide payment receipts to strengthen the case, in accordance with article 26 of the Attorney Law, which states: 'The attorney's fees and method of payment shall be determined by agreement between the attorney and his client. If there is no agreement, or if the agreement is disputed or void, the court that adjudicated the case shall estimate the fees based on a request from either the attorney or the client, considering the effort exerted by the attorney and the benefit gained by the client. This rule also applies if any subsidiary claim arises from the original lawsuit'.

However, our experience indicates that the court is not always obligated to award the full amount of the claimed compensation. In some cases, the court appoints an expert to prepare a detailed report on the costs, taking into account various factors such as the size of the case, the number of hearings, written submissions and actions undertaken. Usually, compensation is estimated between 10 per cent and 15 per cent of the amount claimed in the original case, according to judicial custom.

If the defendant is able to demonstrate during the proceedings that the attorney's fees claimed by the plaintiff are inconsistent with the usual practices of the courts, this may lead the court to reduce those fees in proportion to the nature of the case. Additionally, if the defendant proves that the legal standards applied do not apply to their situation, or that there was no undue delay or obstruction on their part in the original case, the court may be inclined not to hold them liable for attorney's fees.

Law stated - 20 June 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In the Kingdom of Saudi Arabia, contingency fee arrangements are very common. A common legal fees arrangement is to charge an upfront fee, with the remainder being a percentage success fee if the law firm wins the case. Therefore, these arrangements are available and agreed upon by the parties in advance.

Under Saudi law, there is no specific legal provision prohibiting parties from receiving third-party funding to cover legal costs or attorney's fees, provided that the funding does not interfere with the course of the case or the rights of the parties involved. In other words, a third party may assist with the financial aspects of a case as long as their involvement remains strictly financial and does not influence the judicial process.

It is important to note the provisions of the Civil Transactions Law regarding the prohibition on persons involved in the litigation of the dispute from buying the disputed rights involved. Article 358 states the following:

- judges, members of the public prosecution, those in similar positions and court employees are prohibited from purchasing for themselves or others the disputed right or part of it and any such contract shall be void;
- a lawyer is prohibited from purchasing for themselves or others the disputed right or part of it whenever they are a representative in the matter, and any such contract shall be void; and
- a right is considered disputed if a lawsuit has been filed concerning it or there is a serious dispute regarding it.

Therefore, lawyers who represent their clients, judges and members of the Public Prosecution are prohibited from purchasing the rights involved in the dispute to avoid any conflict of interest.

There is nothing to prevent, in principle, risk-sharing with a third party under Saudi law if that is the arrangement between the parties. A third-party funder may also receive a share of the proceeds from the claim if agreed upon.

However, it is important to note that Saudi law does not contain direct regulation or clear provisions governing this type of financing or the sharing of risks and proceeds with a third party in litigation.

In other words, there are no specific legal texts that formally address third-party litigation funding or the sharing of proceeds, so this type of arrangement generally relies on private contracts between the parties and legal jurisprudence, while adhering to the principles of Islamic Sharia, such as the prohibition of usury ' ربا ' (riba) and excessive uncertainty ' غرار ' (gharar).

Therefore, while there is practical room for third-party funding of litigation with risk and profit sharing, this remains unofficially regulated within the Saudi legal system and requires compliance with general laws and Sharia principles.

Law stated - 20 June 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

There is no specific insurance that covers the legal costs of a party, either fully or partially. If the concerned party requires coverage for legal costs, they may need to seek alternative funding sources, as there is no official mechanism or legislation that allows the use of insurance to cover these costs.

Law stated - 20 June 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Yes, parties with similar claims can file a class action. This concept applies in commercial disputes before commercial courts, as well as in disputes before the General Secretariat of the Securities Dispute Resolution Committee, and other examples.

One of the main conditions for filing a class action is the unity of the claim's subject, cause and defendant. The claims must be based on a common issue that significantly affects all plaintiffs. Additionally, the number of plaintiffs must be no fewer than 10.

Law stated - 20 June 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Grounds for appeal may include:

- if the judgment contradicts the provisions of Islamic Sharia or applicable laws that do not conflict with Sharia;
- if the judgment was issued by a court not properly constituted in accordance with the legal system;
- if the judgment was issued by a court or chamber that lacks jurisdiction;
- if there was an error in the legal classification or description of the incident;
- if the judgment was based on forged documents, which were proven to be falsified after the judgment;
- if the judgment was based on false testimony, and this was confirmed by the competent authority after the judgment;
- if the petitioner obtains decisive documents in the case after the judgment, which could not have been submitted earlier;
- if the opposing party committed fraud that affected the judgment;
- if the judgment ruled on something that was not requested by the parties, or exceeded the scope of what was requested;
- if there is a contradiction within the operative part of the judgment;
- if the judgment was issued in absentia; and
- if the judgment was issued against a party who was not properly represented in the proceedings.

Law stated - 20 June 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Subject to the provisions of treaties and international agreements, a foreign judgment or order may only be enforced in the Kingdom based on the principle of reciprocity and after verifying the following conditions.

- jurisdictional competence: the courts of the Kingdom must not have jurisdiction over the dispute in which the foreign judgment or order was issued, and the foreign court that issued it must have jurisdiction according to the rules of international judicial competence recognised under its own legal system;
- proper notification and representation: the parties involved in the foreign proceedings must have been duly summoned, properly represented and given a fair opportunity to present their defence;
- finality of the judgment: the foreign judgment or order must have become final and binding according to the legal system of the issuing court;
- no conflict with domestic judgments: the foreign judgment or order must not conflict with any judgment or order previously issued on the same subject matter by a competent judicial authority within the Kingdom; and
- compatibility with public policy: the foreign judgment or order must not contain provisions contrary to public order (public policy) in the Kingdom.

Law stated - 20 June 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

There are few structured procedures for obtaining oral or documentary evidence intended for use in civil proceedings in foreign jurisdictions. These procedures are governed by international treaties, bilateral judicial cooperation agreements and the principles of judicial reciprocity and sovereignty. For example, Saudi Arabia is a signatory to several bilateral and multilateral agreements that allow for judicial assistance, including the Hague Conventions, as well as GCC Judicial Cooperation Treaties and agreements with countries such as Egypt and Jordan. Such treaties outline the framework for:

- executing letters rogatory (formal requests from foreign courts to obtain evidence);
- providing access to documents or records; and
- evidence collection, such as witness testimony before the Saudi courts, which is typically conducted orally before Saudi courts.

Practically, the procedure includes cooperation between the foreign court and the Saudi Ministry of Justice via diplomatic channels (the Saudi Embassy and Ministry of Foreign Affairs).

Law stated - 20 June 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Saudi arbitration law is based on the UNCITRAL Model Law, but it is not a verbatim adoption. It integrates international arbitration norms while ensuring compatibility with Islamic legal principles and Saudi public policy.

Law stated - 20 June 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing to be enforceable, and it must clearly specify whether it applies to all disputes or to specific types of disputes arising between the parties. It may take the form of a standalone agreement or an arbitration clause incorporated within a broader contract. Additionally, the arbitration agreement must not contravene Islamic Sharia principles.

Law stated - 20 June 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the parties to the arbitration do not agree on the procedures for appointing the arbitrators, or if one of the parties breaches those procedures, the competent court shall – upon the request of any interested party – undertake the necessary procedure or action, unless the arbitration agreement specifies an alternative method for completing such procedure or action.

Law stated - 20 June 2025

Arbitrator options

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28 | What are the options when choosing an arbitrator or arbitrators?

The arbitral tribunal shall be composed of one or more arbitrators, provided that the number of arbitrators is odd; otherwise, the arbitration shall be deemed null and void.

An arbitrator shall satisfy the following conditions:

- be of full legal capacity;
- be of good conduct and reputation; and
- be a holder of at least a university degree in Sharia or law. If the arbitration tribunal is composed of more than one arbitrator, it shall be sufficient that the chairman of the tribunal meets such requirement.

Law stated - 20 June 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties to the arbitration may agree on the procedures to be followed by the arbitral tribunal, including the right to subject such procedures to the rules in force at any organisation, authority or arbitration centre within the Kingdom or abroad, provided such rules do not contravene the provisions of Islamic Sharia.

In the absence of such an agreement, the arbitral tribunal – while observing the provisions of Islamic Sharia and the provisions of this Law – may select the arbitration procedures it deems appropriate.

Additionally, domestic laws provide guidance on procedural matters to ensure clarity and fairness in the conduct of arbitration.

Law stated - 20 June 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Appointment of arbitrators: if the parties fail to agree on the appointment of arbitrators, the competent court may intervene to appoint one or more arbitrators, upon request by a party.

Challenge and removal of arbitrators: a party may apply to the court to decide on a challenge to an arbitrator if the arbitral tribunal does not accept the challenge.

Interim measures: courts may grant interim measures before or during the arbitration.

Enforcement of tribunal orders: if the tribunal issues an interim order and a party fails to comply, the other party may request the court to enforce it (implicit from enforcement provisions and court support functions).

Law stated - 20 June 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of either party, order any interim or precautionary measures it deems necessary in relation to the subject matter of the dispute. While the tribunal may issue interim orders, enforcement may require the support of national courts. The domestic law allows parties to apply to courts for enforcement of interim measures.

Law stated - 20 June 2025

Award

32 | When and in what form must the award be delivered?

According to the Saudi Arbitration Law, the arbitral award must be issued within a specific time frame and in a prescribed form to be valid and enforceable. The tribunal is required to render the final award within 12 months from the date arbitral proceedings commence, unless the parties agree otherwise. This period may be extended by the tribunal for an additional six months. If the award is not issued within this time frame, either party may request the competent court to set a new deadline or terminate the proceedings altogether.

The award must be in writing and signed by all arbitrators, or by a majority of them with a note explaining any missing signatures. It must include the full names and addresses of the parties, the names and nationalities of the arbitrators, a reference to the arbitration agreement, a summary of the parties' claims and defences, the reasoning behind the decision, and the dispositive part of the award. The date and place of issuance must also be stated. A signed copy of the award must be delivered to each party. Failure to comply with these formal and procedural requirements may result in the award being challenged or denied enforcement.

Law stated - 20 June 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

In Saudi Arabia, arbitral awards shall not be subject to appeal by any means of recourse. However, they may be challenged by filing an action for annulment in accordance with the provisions set out in this Law.

A party may apply to annul the award within 60 days from the date they are notified of it. The court shall not review the merits of the dispute. The award may only be set aside if one or more of the following grounds are met:

- there was no valid arbitration agreement, or it was void or expired;
- a party lacked legal capacity;
- a party was not properly notified of the appointment of an arbitrator or of the proceedings or was unable to present its case;
- the award addressed matters not included in the arbitration agreement or exceeded its scope;
- the arbitral tribunal was improperly constituted, or the arbitral procedure violated the agreement of the parties or the provisions of the domestic law; and
- the award conflicts with Islamic Sharia or public policy in the Kingdom (this is the only ground the court may consider on its own initiative).

Please note, the annulment action does not constitute an appeal, and the court may not re-examine the factual or legal findings of the arbitral tribunal.

Law stated - 20 June 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

In Saudi Arabia, the enforcement of both domestic and foreign arbitral awards is governed primarily by the Arbitration Law and the Enforcement Law. These laws provide a structured and enforceable mechanism for recognising arbitral awards, subject to certain formal and substantive requirements. Saudi Arabia is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which it applies without reservation regarding commercial disputes. This strengthens the framework for cross-border enforcement.

For domestic arbitral awards, the award must be final, binding and not subject to ongoing annulment proceedings. The party seeking enforcement must file a request before the Enforcement Court, accompanied by a certified copy of the arbitral award and proof of notification to the other party. The court does not review the merits of the case but ensures that the award complies with the requirements of the Arbitration Law, and, crucially, that it does not contravene the principles of Islamic Sharia or public policy. If these conditions are met, the award is enforced in the same manner as a final court judgment.

As for foreign arbitral awards, Saudi Arabia's adherence to the New York Convention facilitates their recognition and enforcement. A party seeking enforcement must demonstrate that the award is final and binding in its country of origin. The application must include the original or a certified copy of the arbitral award and arbitration agreement, along

with certified Arabic translations where applicable. The Enforcement Court will assess whether the award conflicts with Sharia or public order in the Kingdom and whether it meets the formal requirements. Provided that the foreign award satisfies these conditions and reciprocity is observed, it will generally be enforced without re-examining the substance of the dispute.

In both cases, the Enforcement Court's role is to ensure procedural regularity and Sharia compliance. It does not act as an appellate body over the arbitral tribunal. This approach reflects the Kingdom's broader effort to support arbitration as a viable dispute resolution mechanism, while maintaining adherence to its foundational legal principles.

Law stated - 20 June 2025

Costs

35 | Can a successful party recover its costs?

The Saudi Arbitration Law does not explicitly state a default rule on cost allocation. However, it permits the arbitral tribunal to award costs, including legal and arbitration-related expenses, provided there is no agreement to the contrary. The tribunal has discretion to decide how costs should be allocated between the parties, subject to Sharia principles and any applicable arbitration rules.

Where the parties have adopted arbitration rules (eg, SCCA and ICC), those rules often contain express provisions empowering the tribunal to allocate arbitration costs, including legal fees, based on the outcome of the case or on equitable considerations.

Law stated - 20 June 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

In Saudi Arabia, alternative dispute resolution has gained increasing importance in recent years, both as a means of easing the burden on courts and aligning with international best practices for commercial dispute resolution. Several forms of ADR are used, though arbitration and mediation are the most prominent.

Law stated - 20 June 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no universal legal requirement that parties must attempt ADR (such as mediation or arbitration) before commencing litigation or arbitration in Saudi Arabia.

However, for certain types of disputes before courts (eg, family law, labour and some commercial cases), attempting amicable settlement is a mandatory pre-condition before filing a claim. This is often facilitated by the reconciliation centres under the Ministry of Justice.

Law stated - 20 June 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

One of the most distinctive features is the primacy of Sharia as a source of law and public policy. Regardless of the dispute resolution method chosen – litigation, arbitration or mediation – no decision or award may contravene Sharia principles. This means that even when parties agree to foreign law or institutional rules, those rules must still be interpreted and applied in a way that conforms with Saudi public order.

Another important feature is the integration of digital platforms and electronic litigation, particularly through the Najiz platform managed by the Ministry of Justice. This system has significantly improved access to justice, allowing parties to file cases, attend hearings, and even receive judgments electronically.

Law stated - 20 June 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In recent years, Saudi Arabia has implemented a series of substantial reforms to its legal and dispute resolution framework, with the objective of enhancing procedural efficiency, attracting foreign and domestic investment, and aligning with international legal standards. These developments form part of the Kingdom's broader legal transformation under Vision 2030 and reflect a commitment to increasing transparency, consistency and investor confidence.

Civil Transactions Law

Effective as of 16 December 2023, the Civil Transactions Law represents a major step in the codification of commercial and Sharia-based legal principles. The Civil Transactions Law addresses key areas such as contractual obligations, breach of contract, evidentiary rules and introduces a comprehensive statute of limitations regime. This legislative development provides greater legal clarity and predictability in commercial dealings and is expected to significantly reinforce investor trust in transactions governed by Saudi law.

Evidence Law

Promulgated by Royal Decree No. M/43 dated 26/05/1443H (30 December 2021) and entering into force in mid-2022, the Evidence Law is one of the most transformative legal instruments enacted in recent years. It standardises the rules governing the admissibility and assessment of evidence in civil and commercial proceedings, including arbitration. The law codifies principles relating to written and electronic evidence, witness testimony, expert opinions and judicial presumptions, while also recognising the validity of digital documents and electronic signatures. The law enhances legal certainty and supports the development of a more predictable dispute resolution environment.

Saudi Center for Commercial Arbitration (SCCA) Rules

On 1 May 2023, the Saudi Center for Commercial Arbitration introduced a revised set of Arbitration Rules designed to modernise arbitration practices in the Kingdom. Key innovations include the establishment of the Saudi Center for Commercial Arbitration Court to oversee the arbitral process, provisions for emergency and expedited arbitration and the expanded use of technology in case management. These enhancements reflect international best practices and aim to make arbitration in Saudi Arabia more efficient, accessible and attractive to commercial parties.

Law stated - 20 June 2025

الزمخشري ومشاركوه
Zamakhchary & Co.

Sarah Gonem
Sharaf Kazim
Youssef Ageel

sarah.gonem@zamakhchary.com
sharaf.kazim@zamakhchary.com
youssef.ageel@zamakhchary.com

Zamakhchary & Co

Read more from this firm on Lexology

Serbia

[Nenad Stanković](#), [Sara Pendjer](#), [Luka Marosiuk](#)

[Stankovic & Partners NSTLaw](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The civil court system is divided between courts of general jurisdiction and commercial courts. General courts operate in the following hierarchy: basic courts, higher courts, appellate courts and the Supreme Court of Cassation. Basic and higher courts act as courts of first instances. The main difference between the competencies of these two types of courts is in the value of the disputes – higher courts are competent for the disputes where the value is higher than €40,000. In most cases, higher courts decide on appeals against the decisions rendered by the basic courts. Appellate courts decide on the appeals filed against the decisions rendered by the higher courts. The Supreme Court of Cassation decides on extraordinary legal remedies in both commercial and non-commercial disputes.

Commercial courts serve as courts of first instance in commercial disputes (in general, disputes between two commercial entities). The Commercial Appellate Court decides on appeals on decisions issued by commercial courts.

The Constitutional Court decides on constitutional appeals. Constitutional appeals are appeals against final decisions that allegedly infringe rights granted by the Constitution.

In most cases, decisions of the court of the first instance are rendered by single judge. In second instance courts, three professional judges form a trial chamber. The Supreme Court of Cassation also decides in a trial chamber, which comprises five professional judges.

Law stated - 5 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The role of a judge is a passive one. However, the court is authorised to present evidence and establish the facts that have not been introduced or recommended by the parties, if it follows from the proceedings or presentation of evidence that the parties are disposing of claims being contrary to mandatory norms, public policy, morals or good customs.

There are no juries in civil proceedings, but there are lay judges involved in some first instance proceedings, such as family law disputes or some non-adversarial proceedings. A professional judge always serves as a president of a trial chamber.

When selected for the first time, judges are selected by the National Assembly for a period of three years. After this period, judges are selected for a lifetime by the High Court Council (the independent and autonomous organ ensuring and guaranteeing the independence and autonomy of courts and judges).

During the selection of judges, the following is taken into account: the national demographic, adequate representation of members of national minorities, and knowledge

of professional legal terminology in the language of the national minority that shall be officially used by the court.

Law stated - 5 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

For most civil claims, there are no time limits for bringing a claim to court. Nevertheless, in certain cases, statutes prescribe time limits for bringing claims. Examples include annulment of a decision of a company's assembly: 30 days from the date of receiving the information about the decision, but no later than three months from the date when the decision was enacted; 30 days for filing a lawsuit of dissenting shareholders that were against the specific type of decision of the company; and, to initiate proceedings for protection of employee's rights, 60 days from the date of receipt of a decision that violates employees' rights.

Parties are not allowed to agree on clauses to suspend time limits or other time limits.

A statute of limitation is not a procedural issue. The court will only pay attention to the statute of limitation expiring if the parties invoke this argument.

Law stated - 5 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

There are no mandatory pre-action considerations that parties should take into account. Before filing a lawsuit against Serbia, a party may file a request for peaceful settlement of the dispute to the state attorney, which suspends debt for a time-barred 60 days.

If the court estimates that there is a justifiable danger that it will not be possible to present some evidence or that its subsequent presentation might be difficult, it can order a presentation of evidence. These proceedings are urgent and the court can present evidence, including a pre-action exchange of documents between the parties or from a third person; however, there will be no examination of the parties as, in pre-action behaviour, the court cannot order examination of the parties.

Law stated - 5 May 2025

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings are initiated by filing a lawsuit before a competent court and are commenced once a respondent receives the lawsuit. A plaintiff is notified by receiving a piece of evidence that the court has received a lawsuit, while a respondent is notified by the court by receiving a lawsuit and exhibits, accompanied by instructions about its rights and obligations arising from the lawsuit.

Currently, courts in Serbia are short on capacity for handling their caseload and are unable to act within prescribed time limits. This is because there are not enough judges and administrative staff in comparison to the number of cases. In most cases, judges share courtrooms, which results in one judge holding hearings on odd days and the other on even days. Some of the proposals to ease capacity issues are employing new judges, delegating some of the court's responsibilities to public notaries, adopting the Law on Protection of the Right to Trial within a reasonable time and introducing licensed mediators to help parties reach an agreement before the lawsuit.

The courts charge the fees for initiation of the proceedings (filing of a lawsuit).

However, the proceedings move forward even if the fee is not paid and the court has the authority to initiate forced collection of the fee.

Law stated - 5 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Even though there are specifics for every kind of proceeding, a typical procedure is as follows:

- the plaintiff files a lawsuit;
- the court performs a formal check of the lawsuit;
- if the lawsuit passes this formal check, it will be delivered to the respondent for a response within 15 days of receipt;
- the respondent then has 30 days to provide a response to the lawsuit;
- the court schedules and holds a preparatory hearing within 30 days of its delivery to the plaintiff of the response to the lawsuit. However, a preparatory hearing can be postponed an unlimited number of times, which can make procedures lengthy;
- one or more hearings, with possible submissions between them;
- conclusion of the hearing;
- first instance decision (in writing within eight days of the announcement or, in more complex cases, within 15 days, which is rarely fulfilled in practice);
- appeal: 15 days from receipt of the written judgment;
- the opposing party has 15 days to provide a response to the appeal (response is optional);
-

the appeal, response to the appeal and complete court records are delivered to the court of second instance within eight days of receipt of the response;

- the court of second instance usually decides without a hearing, the deadline for the decision being nine months after the receipt of a case file;
- if the second instance court sends the case back to the court of first instance for another decision, it sends it within 30 days of the decision and the court of first instance must hold a new hearing within 30 days of receipt of records from the court of second instance;
- if the second instance court decides not to send the case back for another decision and to decide on its own, the decision becomes final; and
- in certain cases, the parties have the right to extraordinary legal remedies; however (unlike appeal), they do not have suspensive effect over the decision.

The opposing party is served a claim and has a duty to submit response to the lawsuit not later than 30 days from the moment it is served. This does not apply to small value disputes (in commercial disputes of the value lower than €30,000) where the first hearing is immediately scheduled.

Counterclaim and compensational objection may be filed until completion of the main hearing.

Law stated - 5 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Yes, the parties can challenge the court's jurisdiction in submissions, as well as during oral pleadings.

The parties are required to challenge the jurisdiction of the court at the moment of submitting response to the lawsuit or at the preparatory hearing and they can object:

- territorial jurisdiction of the court; and
- relative subject matter jurisdiction (ie, the division of competencies between the higher and lower courts).

The challenge must be made at the moment of submission of the response to the lawsuit or prior to the commencement of the preparatory hearing, and if such a hearing is not held, before the commencement of the main hearing.

The court is obliged to observe ex officio whether it has the absolute subject matter jurisdiction, meaning:

- whether the courts of the Republic of Serbia are competent; and
- whether the relevant matter is within the competence of the court or of another body.

Parties are not entitled to apply for anti-suit orders.

Law stated - 5 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties can only recommend the timetable to the court. The judge then issues a final decision on the timetable. Failure to conduct the proceeding in accordance with the adopted timetable is the basis for initiation of disciplinary proceedings against the judge.

Parties are not authorised to agree on extension of the time limits.

Law stated - 5 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

During proceedings, both parties can request evidence, especially relevant documents to be obtained from the other party and also from a third party that is not directly involved in the proceedings.

If one party states that there is a relevant document that the party wants to use as evidence, and claims that document is in the possession of another party, the court can order that party to submit that document to the court. The party is allowed to refuse to submit the document if it contains privileged information. If the other party denies possession of that evidence, the court can perform a presentation of evidence to establish where the evidence is located.

Law stated - 5 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Witnesses are allowed to withhold answers about the information entrusted to them by the party as the party's proxy or as the party's religious confessor. Facts learned by the witness in the capacity of lawyer, medical doctor or other professionals are also considered privileged if there is an obligation to maintain professional secrecy. The parties to the proceedings, as well as witnesses, are allowed to refuse to give an answer or provide a document that contains sensitive information or could expose the party or witness to a criminal or civil (material) liability. This privilege of party or witness can be used as

protection against exposing the party or witness, as well as his or her spouse, civil partner, direct ascendants and descendants, and distant relatives.

Advice from an in-house lawyer is not privileged, but a company's representative is entitled to refuse to give an answer about the internal company conversation. The court will assess the importance of the party's denial to testify.

Law stated - 5 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

The parties do not usually exchange written evidence before trial, except where documents must be obtained upon request. Although it is not prohibited, parties are cautious regarding voluntary disclosure of their tactics.

Law stated - 5 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The presentation of evidence depends on the type of evidence, the most common being witnesses, experts and relevant documents. Witnesses usually give oral testimony. A witness may submit a written statement, which must be certified before the public notary. The court can call upon a witness to confirm his or her testimony before the court at the hearing or through a conference call, via phone or video.

Experts give written statements about their observations and opinions on facts. If observations and opinions issued by the expert are unclear, incomplete or contradictory, the court shall order the expert to supplement or correct the observations and opinions and set a deadline for elimination of deficiencies, or invite the expert to come to a hearing to orally present his or her submission.

Law stated - 5 May 2025

Interim remedies

13 | What interim remedies are available?

Interim remedy can be granted if a party shows that its claim is probable, and that, without a granted interim remedy, collection of its claim would be jeopardised. The Law on Enforcement and Security, which regulates this topic in Serbia, stipulates a non-exhaustive list of possible interim remedies (measures). There are two groups of interim remedies, for securing pecuniary and for securing non-pecuniary claims. As regards freezing injunctions,

the freezing of bank accounts is available. Search orders are available as a part of seizure of assets.

Interim measures can be issued in support of foreign proceedings.

Law stated - 5 May 2025

Remedies

14 | What substantive remedies are available?

The court can order a respondent to give or perform something to stand or prohibit the respondent from doing something to the plaintiff's detriment. If requested, the court can only determine the existence, that is, the absence of a right or legal relationship, violation of the rights of a person or the truth or inaccuracy of a document.

Punitive damages or liquated damages are not recognised by the Serbian legal system. Interest is payable on money judgment after the voluntary obligation for fulfilment deadline, stated in a judgment, has passed, unless stated otherwise in the agreement or in the law. Courts can only order single interest, while compound interest is forbidden.

Law stated - 5 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

There are rules governing the settlement process, which can be in or out-of-court settlements. Parties are entitled to keep settlement discussions confidential from the court.

Law stated - 5 May 2025

Enforcement

16 | What means of enforcement are available?

In most cases, enforcement is performed by the public bailiffs by prescribed methods of seizure of assets and their monetisation or compulsory performance of specific non-pecuniary performance. A debtor that disobeys orders from public bailiffs or that alienates, hides, damages or diminishes its property or undertakes actions that may cause irreparable damage that is difficult to repair to the enforcement creditors can be sanctioned with a monetary fine. If a debtor does not fulfil its obligation to perform, non-perform or stand what is established by enforceable document, a court can give that party additional time for fulfilment and instruct the debtor that if he or she fails to fulfil their obligation within the additional time it will be obliged to pay to the creditor a certain amount of money for each day of default or some other unit of time (court penalties).

Serbian criminal law recognises refusal to act upon a final court decision or failure to act within the stipulated time by the responsible person in a legal entity as a criminal act.

Law stated - 5 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Generally, hearings are public, except for special proceedings, such as family law proceedings. The court may exclude the public from all or part of the hearings to protect the interests of national security, public policy and morals in a democratic society, as well as to protect the interests of minors or the privacy of participants in the proceedings if the measures for maintaining the order prescribed by law cannot ensure a smooth running of the hearing.

The parties, their representatives and proxies are allowed, with the permission of a judge, to review, photocopy, photograph and transcribe the case file in which they participate. A third party that has a legitimate interest can also request this insight into case files.

If the hearing is held privately, announcement of the judgement is always public.

The Serbian system does not recognise confidentiality club.

Law stated - 5 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The court has the power to order costs. Costs consist of court fees, attorney fees and other expenses necessary for conducting a hearing (eg, experts). The general principle is that the 'loser pays', that is, if the party succeeds with its claim or its defence in full, the opposing party will be entitled to reimbursement of costs in full; if the party succeeds partially, the court will order an equal percentage of the requested costs. The party is obliged, regardless of the outcome of the proceedings, to reimburse the opposing party for the costs caused by its own fault or by a case that has occurred to that party. This rule also applies to proxies of the parties.

A foreign or stateless plaintiff may be required to provide security for the respondent's costs if the respondent has requested it. The main exception to this obligation is the exclusion of this obligation by international convention or if the domestic respondent is not obliged to provide security for costs in the jurisdiction from which the respondent originates.

The same costs rules apply to all claims in a sense that the main rule is that the party which loses the case has a duty to compensate the costs to the other party.

The court fees depend whether proceedings are held before the basic courts or commercial courts.

The court fees are settled by courts' tariff and there are no exceptions from these rules.

The fees of the court experts are also prescribed by the tariff and the parties cannot deviate from them.

The attorneys' fees are agreed between the party and the attorney, however, when deciding on the costs, the court will only recognize necessary costs of the attorneys for conducting the proceedings in the amount prescribed by the attorneys' tariff.

Law stated - 5 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In proceedings related to property claims, lawyers are entitled to conclude a written agreement with their clients stipulating that the lawyer's fee will be paid in proportion to the success in the proceedings. The agreed percentage must not exceed 30 per cent. 'No win, no fee' agreements are available, but only for property claims, while for non-property claims the parties are only allowed to agree to a 50 per cent deduction of the lawyer's fee. An agreement that would stipulate that a lawyer would purchase a disputed right entrusted to him or her, or contracted for itself participation in the division of the amount awarded to his or her principal, is null and void.

Third-party funding is not regulated by Serbian law. Court decisions can award the costs only to parties in the proceedings, not to third parties. Regarding participation in the liability, the respondent is entitled to conclude an agreement on the assumption of fulfilment with a third party, subject to the deferred condition that the party needs to pay anything to a plaintiff. Nevertheless, in this scenario, the plaintiff has an obligation to accept payment from a third party, but it would not have any right toward third persons. During the proceedings, the parties are not explicitly obliged to disclose these agreements on third-party funding, but as it can lead to a conflict of interest and threaten the judge's impartiality and independence, it is recommended to disclose those agreements.

Law stated - 5 May 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Insurance as the protection of an obligation to pay all or part of the legal costs of a party is not used in Serbia and, to the best of our knowledge, insurance companies do not offer these types of insurance. Insurance legislation does not prevent the conclusion of these types of agreements.

However, an insurance agreement is considered null and void if:

- the insured risk has already occurred;
- it was certain that it would occur; or
- it is possible that it had already ceased to exist (therefore, frivolous claims are uninsurable).

During the negotiation process, the party is obliged to disclose to its insurance company all information about the case, as hiding this information can lead to an insurance agreement being void.

Law stated - 5 May 2025

Class action

- 21** | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The Serbian legal system does not recognise class action litigation. Previous attempts to introduce consumer class action lawsuits ended when the Constitutional Court decided that those lawsuits were unconstitutional. There have been many attempts, mainly from organisations for the protection of consumer rights, to change laws so that they permit class action lawsuits. To date, these attempts have been unsuccessful.

Law stated - 5 May 2025

Appeal

- 22** | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The first instance judgment is always subject to appeal. General grounds for appeal are: significant breach of provisions of rules governing the adversarial proceedings, erroneously or incompletely established factual situation, and erroneous application of substantive law.

The Serbian legal system recognises three types of extraordinary legal remedies: revision before the Supreme Court of Cassation, motion to reopen the proceedings filed by the party and motion to reconsider final and binding judgment, which can only be filed by the public prosecutor.

Law stated - 5 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Recognition and enforcement of foreign judgments is regulated by international treaties, as well as by the domestic private international law. There are two types of proceedings: the first is a non-adversarial proceeding, which is limited to the process of recognition. After this proceeding is completed and if the foreign judgment is recognised, it has the status of a domestic judgment.

The second type is a proceeding for recognition of judgment as a preliminary issue in some other proceedings, including enforcement proceedings. In these proceedings, the decision on recognition has effect only for the main proceedings.

The condition for recognition is reciprocity with the country where the decision is rendered. Reciprocity can be established by law, by international treaty or by fact.

Law stated - 5 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

These proceedings do exist in the Serbian legal system. Rules regulating these proceedings are prescribed mainly by international or bilateral treaties on international legal aid or in the Law on Adversarial Proceedings, which are applicable unless stated otherwise in the particular agreement.

The general rule is that the procedure of international legal aid is initiated at the request for help from the foreign court that is communicated via diplomatic channels. Presentation of evidence is done in accordance with domestic procedural law or in accordance with the foreign procedural law, unless such presentation of evidence is not contrary to the public policy of Serbia.

Law stated - 5 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The Serbian Law on Arbitration is based on the UNCITRAL Model Law on International Commercial Arbitration. Furthermore, Serbia is a party to the New York Convention on Recognition and Enforcement of Arbitral Awards.

Law stated - 5 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

For arbitration agreements to be enforceable, they must be in writing. An arbitration agreement is in writing if it is concluded by an exchange of messages that enable written evidence of the agreement of the parties, regardless of whether those messages have been signed by the parties. An arbitration agreement can be a separate agreement, part of a written commercial agreement, part of some other agreement or part of the terms and conditions of one party to which the agreement in writing refers.

Except when an arbitration agreement is not in writing, it is deemed null and void if a dispute is not arbitrable; the contracting parties did not have the capacity or ability to conclude it; it is concluded under the influence of coercion, threats, fraud or misrepresentation; or if the parties chose an even number of arbitrators.

Law stated - 5 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement and relevant rules are silent on the number of arbitrators, their number will be determined by the chosen appointment authority (a person or institution designated by the parties). If the parties have not chosen that appointment authority, the number will be determined by the court. If the permanent arbitral institution organises arbitration, that institution will be the appointing authority.

If the case is to be decided by a sole arbitrator, the appointment of that arbitrator will be agreed by the parties. If the parties fail to reach an agreement on the appointment in 30 days, the arbitrator will be appointed by the person or institution to which the parties entrusted this task. Finally, if the parties are silent on that matter, the arbitrator will be appointed by the court.

If the case is to be decided by a panel of three arbitrators, then each party appoints one arbitrator, and if the party does not appoint an arbitrator, the appointing authority will appoint the arbitrator. If the parties are silent on this matter, the arbitrator will be appointed by the court. The president of the tribunal is appointed by the already appointed arbitrators, or if they do not reach an agreement, by the person or institution to which the parties entrust this task. If the parties are silent on this matter also, the arbitrator will be appointed by the court. An appeal against the decision of the court to appoint an arbitrator is not allowed.

An arbitrator may only be challenged if there are facts that can justifiably raise concerns about the arbitrator's impartiality or independence, or that he or she does not meet the criteria established by the parties' agreement. The parties can challenge the appointment up to 15 days from the day they were notified about the appointment or from the day that they become aware of the reasons on which they base the challenge.

Law stated - 5 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

An arbitrator may be any person with legal capacity, irrespective of nationality or profession. The arbitrator must be impartial and independent from the parties. Before accepting the appointment, he or she must declare all the facts that might raise doubts about his or her impartiality and independence. The potential arbitrator cannot be appointed if he or she is sentenced to unconditional imprisonment, while the consequences of conviction last.

None of the two currently active permanent commercial arbitration institutions in our jurisdiction (Belgrade Arbitration Center (BAC) and Permanent Arbitration at the Chamber of Commerce and Industry of Serbia) have a pool of arbitrators. Although the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia has no roster of arbitrators, to assist the parties with the choice of arbitrators, the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia prepares a list of persons qualified for dispute resolution who may be appointed as arbitrators by the parties.

Law stated - 5 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to choose rules for regulating their dispute or to point to the rules of some permanent arbitration institution. If the arbitration is international, the parties may agree to apply foreign law to the arbitration proceedings. If the parties are silent on this matter, the arbitrators will apply rules that they find appropriate. The parties are equal in the proceedings and the arbitration court has a duty to enable each party to present its arguments and evidence, as well as to present its arguments in relation to the acts of the other party.

Law stated - 5 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Except where the court intervenes to determine the number of arbitrators and arbitrator appointments, the court can decide upon a request for interim relief before or during the arbitration proceedings, irrespective of the fact whether the seat of arbitration is in Serbia

or another country. The court can also assist in the presentation of evidence. That evidence has equal power as any other presented before the arbitrator or arbitrators.

If the arbitral tribunal decides on the objections to its jurisdiction and scope of the agreement, as a preliminary question either party may request the court designated by law to decide on this matter, within 30 days of the date of receipt of the decision. No appeal shall be allowed against this decision of the court.

If the parties mutually agree, ad hoc arbitration or a permanent arbitration institution may deposit the final award at the court, for the court to deliver the award to the parties.

Except for challenging the jurisdiction of the tribunal, the court's powers can be overridden by an agreement, as the court can only have a role if the parties have not used their right or are silent on that matter, as well as when the arbitrators need assistance.

Law stated - 5 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Unless the parties explicitly provide differently, the arbitrator or tribunal has powers to grant interim relief before or during the arbitration. The arbitrators may grant any type of interim relief they find suitable, taking into consideration the type of dispute. The arbitrators may condition their decision on interim relief, subjecting another party to provide reasonable securitisation.

Law stated - 5 May 2025

Award

32 | When and in what form must the award be delivered?

The arbitrators decide on the case in the form of a written final arbitral award. The arbitral tribunal may make separate awards on different issues at different times (partial award) or on cross-claims (interim award). An arbitral award is issued after the deliberation of all the arbitrators, unless the parties have agreed otherwise. A majority of arbitrators have to vote for the award, unless the parties have agreed otherwise.

According to the rules of two permanent arbitration institutions in our jurisdiction, arbitrators have six months from the date of constitution of the arbitral tribunal to solve the dispute. However, this period can be prolonged at the request of the parties, tribunal or presidency of the BAC or Permanent Arbitration at the Chamber of Commerce and Industry of Serbia. The rules of the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia stipulate that the final award shall be made within 30 days of the last non-public hearing of the arbitration tribunal.

Law stated - 5 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

The final (domestic) arbitral award has the effect of a final and binding decision and it cannot be appealed.

In ad hoc arbitrations, the parties are able to agree to an arbitral appeal mechanism that should postpone the final and binding effect of the award.

An award can be challenged because of the following reasons:

1. Arbitration agreement is invalid under the chosen law or if the law has not been chosen, under the laws of Serbia;
2. A party has not been properly notified of the appointment of an arbitrator or the arbitration proceedings, or it was otherwise unable to present its case;
3. Dispute not covered by the arbitration agreement was resolved by arbitration; or contains decisions on matters beyond the scope of the arbitration agreement. The award can be set aside only partially if part of the award that is out of the scope of the arbitration agreement can be separated from the rest of the award;
4. Composition of the arbitral tribunal or the arbitration proceeding was not in accordance with the arbitration agreement, or rules of arbitral institution administering the proceeding, unless such agreement is in conflict with a mandatory provision of the Law on Arbitration; or, in the absence of the parties' agreement, if the composition of the arbitral tribunal or the arbitration proceeding was not in accordance with the Law on Arbitration;
5. Arbitral award is based on a false statement of a witness or an expert or falsified document, or the award was a consequence of criminal offence of an arbitrator or a party, but this must be evidenced by final and binding judgment.

or the court finds that:

1. subject matter of the dispute is not arbitrable pursuant to the Serbian law; or
2. award is in contradiction with the public policy of Serbia.

The court reviews existence of the reasons from 1 to 5 only upon request of a party, while the court is obliged to review award and determine the non-existence of reasons 6 and/or 7, even if the challenging party has not invoked it.

Law stated - 5 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Domestic final awards have the legal effect of a final and binding judgment issued by the court, while foreign arbitral awards have that effect once they are recognised. The Serbian Law on Arbitration contains exactly the same rules as those in the New York Convention. Domestic awards are enforced equally as any court's judgment. Control of domestic awards is possible through the process of annulment of an arbitral award.

A foreign arbitral award must be recognised before enforcement. There is a right to appeal the first instance decision within 30 days of its receipt. Once the award is recognised, it has domestic final and binding effect.

This procedure has not been affected by changes in the political landscape.

The Republic of Serbia is a party to the New York Convention.

Law stated - 5 May 2025

Costs

35 | Can a successful party recover its costs?

The parties are obliged to pay for the costs of arbitration in advance. A decision on costs is a mandatory element of the final award. The law does not contain provisions on when and if a party can recover the costs of arbitration. Usually, the tribunal would apply the 'loser pays' principle.

The Law on Arbitration does not regulate third-party funding, nor has a Serbian court yet decided on the matter.

Law stated - 5 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative dispute resolution (ADR) processes are not commonly used in Serbia. The most commonly used ADR process is mediation.

There is no mandatory provision regarding referral of the parties to mediation.

Serbia was one of the first countries in the world to sign the Singapore Convention on Mediation, which applies to international settlement agreements resulting from mediation.

Adjudication is mostly used in resolving construction disputes.

Law stated - 5 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

The court does not have the power to compel parties to mediation before or during the proceedings. At the beginning of the preparatory hearing, the parties are informed that they can peacefully solve their dispute if they wish. If the parties choose mediation, they are obliged to engage licensed mediators. Mediation proceedings are initiated by accepting a proposal for mediation, and, if the other party is silent on the proposal, it is deemed that the proposal is rejected. The parties are allowed to initiate mediation proceedings during the proceedings, even during appeal proceedings. If the parties resolve their dispute through mediation, they are released from paying the court's administrative fee.

Law stated - 5 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

One particularly interesting feature about the dispute resolution in our jurisdiction is the possibility of retorsion. This enables a Serbian natural or legal citizen to establish jurisdiction of domestic courts over foreign nationals if there is jurisdiction in a foreign country over Serbia. Domestic plaintiffs can use that criterion (not prescribed in Serbian law, but prescribed in a foreign legal system) to establish jurisdiction against a foreigner coming from that state whose law has such provision.

Law stated - 5 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

No significant developments occurred in the field of dispute resolution in Serbia during past year. It is worth mentioning that in April 2024, the Construction Dispute Resolution Center, established by the Association of Consulting Engineers of Serbia under the Law on Arbitration, is a permanent institution based in Belgrade for alternative dispute resolution in the construction sector. Its purpose is to provide efficient and expert resolution of disputes through arbitration and dispute adjudication boards, with an emphasis on predictable and reasonable costs.

Law stated - 5 May 2025



Nenad Stanković

Sara Pendjer

Luka Marosiuk

nenad.stankovic@nstlaw.rs

sara.pendjer@nstlaw.rs

luka.marosiuk@nstlaw.rs

Stankovic & Partners NSTLaw

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The judicial power of Singapore is vested in the Supreme Court, State Courts and Family Justice Courts.

The Supreme Court hears civil and criminal cases. It consists of the Court of Appeal and the High Court (which comprises the General Division, Appellate Division and the Singapore International Commercial Court).

The State Courts hear civil and criminal cases. The State Courts include the district courts, magistrates' courts, coroners' courts, protection from harassment courts, small claims tribunals, community dispute resolution tribunals and employment claims tribunals.

The Family Justice Courts hear family cases and selected criminal cases involving youth offenders, and include the Family Courts, Youth Courts and the Family Division of the High Court.

The head of the judiciary is the chief justice.

As of 1 May 2025, the Supreme Court Bench consists of 36 judges (including the chief justice, three justices of the Court of Appeal, four judges of the Appellate Division, five judicial commissioners, five senior judges, 18 judges of the High Court) and 24 international judges.

The chief justice, judges of appeal and judges of the High Court have tenure until the age of 65, unless further extended by approval of the president. Judicial commissioners are appointed on a short-term contract basis, but enjoy the same powers and immunities as a judge of the High Court during their term. The senior judges and international judges are appointed for a specified period (usually three years).

With effect from 2 January 2021, the High Court was restructured into the General Division of the High Court and the Appellate Division of the High Court.

The General Division of the High Court exercises both original and appellate jurisdiction in civil and criminal cases. The General Division continues to exercise supervisory and revisionary jurisdiction over the State Courts. Unless specified otherwise by any written law, proceedings in the General Division of the High Court are heard before a single judge.

The Appellate Division of the High Court hears all civil appeals that are not allocated to the Court of Appeal under the Sixth Schedule of the Supreme Court of Judicature Act (SCJA), and any civil appeal or other process that any written law provides is to lie to the Appellate Division. Appeals to the Appellate Division will usually be heard by three judges. However, certain appeals may be heard by two judges. Further, certain appeals may be decided without hearing oral arguments if the parties consent.

The Court of Appeal, which is the highest appellate court in Singapore, hears all criminal appeals against decisions made by the General Division in the exercise of its original criminal jurisdiction, prescribed categories of civil appeals and appeals that are to be made to the Court of Appeal under written law. Appeals to the Court of Appeal are usually heard

by a bench of three judges, although some appeals are heard by only two judges. Where necessary, the Court of Appeal may comprise five or more judges. Judges of the High Court may sit in the Court of Appeal on such occasion as the chief justice requires.

As a superior court of record, the General Division of the High Court has unlimited original jurisdiction over civil claims. With the exception of probate matters, the action must be commenced in the General Division of the High Court where the value of the claim exceeds S\$250,000. Probate matters are commenced in the Family Division of the High Court only if the value of the deceased's estate exceeds S\$5 million, or if resealing of a foreign grant is involved. Ancillary matters in family proceedings involving assets exceeding S\$1.5 million are also heard in the General Division of the High Court. Further, admiralty matters, company winding-up and bankruptcy proceedings, and applications for the admission of advocates and solicitors are exclusively heard by the General Division of the High Court.

Within the General Division of the High Court, various specialist lists have been set up for:

- arbitration;
- tort claims, intellectual property/information technology;
- finance, securities, banking, complex commercial cases;
- building and construction, shipbuilding, complex and technical cases;
- shipping and insurance;
- revenue law;
- public law and judicial review; and
- company law, insolvency and trusts.

Certain judges of the General Division of the High Court identified as having expertise in these specialised areas of law would generally be assigned to hear matters in the respective areas.

The Singapore International Commercial Court (SICC) is a division of the General Division of the High Court designed as a specialist court for transnational commercial disputes, and its proceedings are governed by its own set of rules and practice directions that follow international best practice. The SICC provides for various special features in line with its international character, such as adjudication by specialist commercial judges and foreign representation of parties. The SICC has jurisdiction to hear and try an action if:

- the claim in the action is of an international and commercial nature;
- the parties to the action have submitted to the SICC's jurisdiction under a written jurisdiction agreement; and
- the parties to the action do not seek any relief in the form of, or connected with, a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention).

The SICC may also hear cases that are transferred from the General Division of the High Court. Questions relating to whether the SICC has jurisdiction shall be heard and determined by the SICC. SICC cases may be heard by either one or three judges.

Within the State Courts, civil claims with a value of up to S\$60,000 may be commenced in the magistrates' courts, which provides for a simplified civil procedure. This includes the upfront disclosure of documents, a limitation on interlocutory applications and early and robust case management. Civil claims with a value exceeding S\$60,000 but not exceeding S\$250,000 (or in the case of road traffic accident claims or claims for personal injuries arising out of industrial accidents, with a claim value exceeding S\$60,000 but not exceeding S\$500,000) may be commenced in the district courts. However, if all parties consent, a district court may exercise its jurisdiction to try an action even where the amount in dispute exceeds S\$250,000 (or S\$500,000, in the case of road traffic accident claims or claims for personal injuries arising out of industrial accidents). Parties to district court proceedings may also, by consent, adopt the simplified procedure used in magistrates' court cases.

The Employment Claims Tribunal (ECT) hears only salary-related (whether statutory or contractual) employment disputes for all employees, claims for wrongful dismissal and claims for salary in lieu of notice of termination by all employers, subject to a claim limit of S\$20,000, or if the case has undergone the Tripartite Mediation Framework or mediations assisted by unions recognised under the Industrial Relations Act, S\$30,000. Before a claim may be heard by the ECT, parties must undergo compulsory mediation conducted by the Tripartite Alliance for Dispute Management. The proceedings in the ECT are designed to be informal and judge-led, and representation by lawyers is not allowed. The ECT is not bound by the usual rules of evidence and may inform itself on any matter in such manner as it thinks fit.

The Small Claims Tribunals can only hear certain types of cases (such as claims relating to contracts for the sale of goods or provision of services) with a value not exceeding S\$20,000 (or S\$30,000, if the parties consent). Proceedings are conducted expeditiously and with minimal formalities (and costs). Parties are not allowed to be represented by lawyers.

Disputes between neighbours (living in the same building or within a 100-metre radius of the place of residence) can be heard by the Community Disputes Resolution Tribunal. Such disputes must involve acts of unreasonable interference with the enjoyment or use of place of residence, up to a claim amount of S\$20,000 filed within two years of the event that created the cause of action. No court proceedings must have been commenced in relation to the dispute. Parties are not allowed to be represented by lawyers unless all parties to the proceedings and the court agree.

The Protection of Harassment Courts have a concurrent jurisdiction over civil harassment claims with the Family Justice Courts. If the claim is for monetary relief, then it must be commenced in the Protection from Harassment Courts under the Protection from Harassment Act 2014. If the claim amount is up to S\$20,000, the claim will be conducted under the simplified proceedings via the community Justice and Tribunals system. However, if it exceeds S\$20,000, it will be dealt with as a civil suit. If non-monetary remedies are sought, the claimant has the option to commence the case in the Protection from Harassment Courts or the Family Justice Courts.

Law stated - 19 May 2025

Judges and juries

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2 | What is the role of the judge and the jury in civil proceedings?

The civil litigation process in Singapore is adversarial in nature, with the parties or their legal representatives presenting evidence and arguments that advance their cases. The judge generally has a passive role as the decider of questions of both fact and law, and decides based on the evidence and arguments advanced by the parties. Since 1970, the jury system is no longer in use in Singapore.

The chief justice, judges of appeal, judicial commissioner and other judges are appointed by the president on the advice of the prime minister. Before giving his advice on the appointment of a judge or judicial commissioner, the prime minister must consult the chief justice. Among other stringent requirements, the candidate must have been a qualified member of the legal profession for a minimum number of years, depending on the level of appointment. To promote diversity on the bench, candidates are chosen from differing backgrounds, ranging from academia to private practice and the public sector. Additionally, the inclusion of international judges in the SICC brings together specialist commercial judges from both civil law and common law traditions.

Law stated - 19 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods for civil claims are generally set out in the Limitation Act 1959. Limitation periods for specific actions or claims (such as those relating to the carriage of goods by sea) are set out in other written law.

In general, actions founded on a contract or on tort must be brought within six years from the date on which the cause of action accrued. Actions upon any judgment shall not be brought after 12 years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after six years from the date on which the interest became due. A claim for contribution under section 15 of the Civil Law Act 1909 shall not be brought after two years from the date on which the right to contribution accrued. Actions to recover land or money secured by mortgage or charge on land or proceeds of the sale of land may not be brought after 12 years from the date on which the right has accrued. Actions for damages for negligence, nuisance or breach of duty may not be brought after six years from the date on which the cause of action accrued or, thereafter, three years from the earliest date on which the claimant first had the knowledge and the right required to bring an action. However, for damages in respect of personal injuries, the time limit to bring an action is three years from the date on which the cause of action accrued or, thereafter, three years from the earliest date on which the claimant had the knowledge required to bring an action for damages in respect of the relevant injury. Actions for negligence, nuisance or breach of duty are also subject to a longstop limit of 15 years from the date of the act or omission constituting the negligence, nuisance or breach of duty, or that caused the injury or damage.

Limitation periods may be extended by fraud of the defendant or their agent concealing the right of action, or by a mistake. The periods of limitation may not run until the fraud or mistake has been or ought to have been discovered by the plaintiff. The limitation period may also be suspended where the claimant is under a disability until after the disability has ceased.

The Limitation Act must be expressly pleaded as a defence to operate as a bar to an action.

The Foreign Limitation Periods Act 2012 provides that where the applicable law in an action or proceedings is the law of another country, state or territory, the law of that other country, state or territory relating to limitation shall apply for the purposes of the action or proceedings to the extent that the application does not conflict with public policy.

Law stated - 19 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Under the Rules of Court 2021 (ROC 2021) a party must make an offer of amicable resolution (to resolve the dispute whether in whole or in part) before commencing an action in the courts, unless the party has reasonable grounds not to do so. It must be in writing, and must be open for acceptance within a reasonable period of time, and in any case, for at least 14 days unless the parties otherwise agree. An offer of amicable resolution must not be rejected by the other party unless it has reasonable grounds to do so. The terms of an offer which has been made and not accepted must not be relied upon or made known to the court until after the court has determined the merits of the action and is dealing with the issue of costs. If a party informs the court that it does not wish to attempt to resolve the dispute by amicable resolution, the court may order the party to submit a sealed document setting out the party's reasons for such refusal. The sealed document will only be opened by the court after the determination of the merits of the action and its contents may be referred to by the court when deciding the issue of costs.

Apart from the requirement to make an offer of amicable resolution, there are also specific pre-action protocols that must be observed in commencing the following claims:

- personal injury claims (excluding medical negligence claims);
- non-injury motor accident claims;
- medical negligence claims;
- non-injury motor accident claims;
- defamation claims (including libel and slander); and
- business-to-business debts (in the State Courts).

There are various optional pre-action applications that parties may consider making in aid of pursuing their claims, for example: Claimants may apply for production of documents and information before the commencement of proceedings or against a non-party to identify possible parties to any proceedings, to enable a party to trace the other party's property or for any other lawful purpose.

Law stated - 19 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

All civil proceedings commenced on or after 1 April 2022, including appeals, are subject to the ROC 2021. The following rules and practice directions will also apply: Supreme Court Practice Directions 2021 (for civil proceedings in the Supreme Court), State Courts Practice Directions 2021 (for civil proceedings in the State Courts), Singapore International Commercial Court Rules 2021 and the Singapore International Commercial Court Procedural Guide 2021 (for civil proceedings in the SICC).

In the Supreme Court and the State Courts, there are two modes of commencing civil proceedings:

- by originating claim. An originating claim must be served together with a statement of claim. Where a defendant is served with a generally endorsed originating claim, the statement of claim must be served within 14 days of service of the originating claim; or
- by originating application. An originating application must be supported by affidavit.

In the SICC, all proceedings must be commenced by an originating application. Every originating application must be accompanied by a claimant's statement and a copy of the written jurisdiction agreement to which the claimant and defendant are party.

Under the ROC 2021, where a substantial dispute of fact is likely to arise or where the claimant intends to seek summary judgment, the proceeding should be begun by originating claim.

Where the proceeding is an application made to the court or a judge under any written law, or where the proceeding principally raises issues of the construction of any written law or of any document or some question of law, or in which there is unlikely to be any substantial dispute of fact, it may be begun by originating application.

Under the ROC 2021, reasonable steps must be taken to serve an originating process expeditiously. Where the originating process is to be served in Singapore, reasonable steps to serve the defendant must be taken within 14 days of the issue of the originating process. Where the originating process is to be served outside Singapore, reasonable steps to serve the originating process must be taken within 28 days of the issue of the originating process.

An originating claim or originating application must be served personally on each defendant (or on their solicitors).

For individuals within Singapore, personal service is effected:

- on a natural person by leaving a copy of the document with that person, or the person's agent if that person is an overseas principal;

- on any entity by leaving a copy of the document with the chairperson or president of the entity, or the secretary, treasurer or other officer;
- on any person or entity according to the requirements of any written law; or
- in any manner agreed with the person or the entity to be served.

The following persons may effect personal service:

- a process server of the court;
- a solicitor;
- a solicitor's employee;
- a litigant who is not legally represented or such a person's employee; or
- any other person that the registrar may allow in a particular case or generally.

Where personal service is impracticable, an application may be made to court for substituted service, such as by way of a notice to be published in a newspaper with national circulation, or by posting on the entrance to the defendant's last known place of residence or some other manner as the court may direct (including by electronic mail or internet transmission).

For defendants outside Singapore, an application must be made to the court for leave to serve the originating process outside Singapore. The court's approval is however not required for service outside Singapore if such service is allowed under a contract between the parties. Service outside Singapore may be effected in the following manner:

- according to the manner contractually agreed between the parties;
- where there is a civil procedure convention governing service in the foreign country, according to the manner provided in that convention;
- through the government of the foreign country if that government is willing to effect service;
- through the judicial authority of the foreign country if that authority is willing to effect service;
- through a Singapore consular authority in that foreign country; or
- according to the manner provided by the law of that foreign country.

Service of originating processes may also be effected by any manner that is agreed between the parties, such as by service on a designated local process service agent specified in a contract signed by the parties. If a defendant's solicitor endorses on the originating process that they accept service on behalf of the defendant, it is deemed served on the defendant.

The courts generally do not face capacity issues impacting their ability to handle disputes in a timely manner. In 2021, the Appellate Division of the High Court was established to address the increase in volume and complexity of the appellate case load and ensure that court proceedings remain efficient while maintaining high standards of access to and quality of justice.

Under the ROC 2021, all parties and the court must seek to achieve the following five Ideals in all civil proceedings:

- fair access to justice;
- expeditious proceedings;
- cost-effective work proportionate to the nature and importance of the action, the complexity of the claim as well as the difficulty or novelty of the issues and questions it raises, and the amount or value of the claim;
- efficient use of court resources; and
- fair and practical results suited to the needs of the parties.

To enhance the effectiveness and efficiency of the judicial processes, the courts continually optimise resources through a multi-pronged strategy, including the promotion of alternative dispute resolution, active case management at pretrial conferences and deployment of technology.

The courts charge document filing fees for starting proceedings or commencing a claim. For civil proceedings, the schedule of fees may be found in the Fourth Schedule of the ROC 2021, while for family proceedings, the schedule of fees may be found in the Fifth Schedule of the Family Justice Rules 2014. In addition, there may also be transmission and processing fees for all documents filed through the eLitigation electronic filing service, as well as handling fees for all documents filed through the CrimsonLogic Service Bureau.

Law stated - 19 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

In the Supreme Court and State Courts, originating claims and originating applications are valid for service for three months from the date of issue. An application may be made to extend the validity of the originating claim or originating application if it has not been served on all or any of the defendants before or after it expires. Except in a special case, the court may extend the validity of the originating claim or originating application only twice and by not more than three months each time.

In the SICC, an originating application is valid for service for 12 months from the date of its issue.

For civil proceedings in the High Court

Upon being served with an originating claim, the defendant must file a notice of intention to contest or not contest within 14 days of service of the statement of claim on the defendant where it is served in Singapore, and 21 days where it is served outside Singapore. If the defendant wishes to contest the claim, the defendant must then file and serve a defence to the originating claim within 21 days of service of the statement of claim on the defendant where it is served in Singapore, and within five weeks where it is served outside Singapore.

If the defendant fails to file and serve a defence within the prescribed time, the claimant may apply for judgment in default of defence. After the defendant has filed its defence or the claimant has filed its defence to counterclaim, no further pleadings may be filed unless the court otherwise orders. If a claimant wishes to file a reply, it must seek approval from the court.

Upon being served with an originating application, the defendant must, if it wishes to contest the originating application, file and serve the defendant's affidavit within 21 days of service of the originating application and supporting affidavit if service is in Singapore, and within five weeks if service is effected outside Singapore. If a defendant does not file and serve the defendant's affidavit within the timelines, the court will proceed on the basis that the defendant does not wish to introduce evidence and will hear the originating application based on the plaintiff's affidavit and the parties' submission. Except in a special case, no further affidavits may be filed after the defendant's affidavit on the merits.

After pleadings have been filed and served, parties will be invited to state their views on whether it is appropriate for the court to order that parties file and exchange affidavits of evidence-in-chief (AEICs) prior to the production of any documents. If parties are unable to agree on whether such an order should be made, the court will determine this issue at a further case conference. The court may order the parties to file and exchange AEICs of all or some witnesses after the pleadings have been filed and served, but before any production of documents and before the court considers the need for any application. This is meant to crystallise key issues, reduce the scope of disclosure and avoid the possibility that witnesses may adjust their evidence to match disclosed documents.

The first case conference will be held eight weeks after the originating claim or originating application is issued, where the defendant is to be served in Singapore, or 12 weeks after the originating claim or originating application is issued, where the originating claim or originating application is to be served outside Singapore, or at any time earlier or later as stipulated by the court. The case conferences will be presided over by the judges or registrars in consultation with the judges, to ensure that the judges have close control over the manner in which a case progresses. Case conferences can be held at any stage over the course of proceedings, including appeals.

Prior to the first case conference, parties will be required to complete a pre-case conference questionnaire, to focus on key issues and identify points of agreement. If parties wish to adduce expert evidence, they must fill in an expert witness template prior to the case conference.

The court will also give directions for a single application pending trial (SAPT) to be filed by each party – akin to an 'omnibus' interlocutory application. This means that each party must file one SAPT (and not that all parties must jointly file one SAPT). The SAPT must deal with all matters that are necessary for the case to proceed expeditiously. The matters to be included in the SAPT include but are not limited to:

- addition or removal of parties;
- consolidation of actions;
- division of issues at trial to be heard separately;
- security for costs;
- further and better particulars of pleadings;



- amendment of pleadings;
- filing of further pleadings;
- striking out of part of an action or of the defence;
- judgment on admission of facts;
- determination of questions of law or construction of documents;
- production of documents;
- interim relief;
- expert evidence and assessors;
- independent witnesses and interested non-parties; and
- independent counsel.

The party applying for the SAPT must file and serve its application and supporting affidavit within 21 days from the date of the case conference, and the other party must file and serve its affidavit in reply within 21 days thereafter. The supporting affidavit and the reply affidavit should address all matters in the SAPT unless otherwise directed by the court.

If a party wishes to file an application before the court gives directions for the filing of the SAPT, it may do so without seeking permission if the intended application falls under Order 9 Rule 9(7) of the ROC 2021 namely:

- injunctions;
- substituted service;
- service out of Singapore;
- setting aside service of an originating process;
- judgment in default of a notice of intention to contest or not contest an originating claim;
- judgment in default of defence;
- summary judgment;
- striking out the whole of an action or defence;
- stay of the whole action;
- stay of enforcement of a judgment or order;
- an enforcement order;
- permission to appeal;
- transfer of proceedings under the State Courts Act;
- setting aside third-party proceedings; or
- permission to make an application for a committal order.

If a party wishes to file an application prior to the filing of the SAPT that is not covered under Order 9 Rule 9(7) of the ROC 2021, the party must seek permission of the court to do so by way of letter setting out the essence of the intended application and the reasons why it is necessary at that stage of the proceedings.

If the court has not made a direction for AEICs to be filed prior to production of documents, the court will give directions for the SAPT to be filed after parties have given production of documents (ie, after general production of documents has been completed). If the court has ordered for AEICs before the exchange of documents, the SAPT should not be filed until after all AEICs have been filed and served.

After the SAPTs are filed, the court may direct parties to file an SAPT checklist to indicate their preferred sequence of the matters set out in the SAPTs to be heard. The court will then issue directions to inform parties of the sequence of the matters to be heard for the respective applications in the SAPTs.

At the appropriate stage, the court must fix a period in which the claimant is to set down the action for trial (for originating claims). For originating claims, where the claimant does not set down the action for trial within the timelines directed, the defendant may set the action down for trial or may apply to the court to dismiss the action and, on the hearing of any such application, the court may order the action to be dismissed accordingly or make such order as the court thinks just. The court must estimate the length of time needed for the trial or hearing, including oral or written submissions, and assign the trial or hearing dates accordingly.

Depending on the complexity of the matter and other factors, such as the location of parties, evidence and witnesses, a matter may proceed to trial as soon as six months from the date of issue of originating process, but more often between 12 and 18 months, and rarely beyond.

For civil proceedings in the State Courts

For originating claims filed in the State Courts, a case conference will be fixed around seven weeks after a defence has been filed. The court will notify parties which of the following case management frameworks applies:

- specially managed civil list (applicable to more complex or high value cases);
- simplified process pursuant to Order 65 of ROC 2021 (for lower value claims);
- court dispute resolution (CDR) process; or
- general process.

Civil simplified case conferences will be called for all magistrates' court cases, save for non-injury motor accident claims, personal injury claims and negligence claims (which will fall under the CDR framework). Where parties to a district court case consent for Order 65 to apply to their proceedings, they can also use the simplified process framework. At civil simplified case conferences, the court will jointly consider with the parties all available options for resolving the case. If a resolution cannot be reached, the court will make the necessary orders or directions either to progress the matter to trial or for assessment of damages.

For civil proceedings in the SICC

A defendant must file and serve a defendant's statement within 28 days of being served with both the originating application and the claimant's statement or accompanying witness statement. The defendant's statement must state:

- whether the defendant intends to contest the claim or any part of it and identify the claim or part that is contested; and
- whether the defendant intends to apply to dispute that the originating application, claimant's statement or accompanying affidavit was properly served or to dispute that the SICC has or should assume jurisdiction in the matter.

The SICC will order that a contested claim or counterclaim be decided by one of the following adjudication tracks (having regard to any agreement between the parties):

- pleadings adjudication track;
- statements adjudication track; or
- memorials adjudication track;

Case management conferences will be held as the SICC thinks appropriate. Prior to a case management conference, parties must:

- attempt to agree on the matters to be discussed at that case management conference including but not limited to the adjudication track for the determination of the dispute and any proposed modifications to the track;
- attempt to identify the real issues in dispute, and any preliminary issues;
- consider the possibility of alternative dispute resolution, and be prepared to inform the SICC of the suitability of the case for alternative dispute resolution; and
- unless the SICC otherwise directs, submit a case management bundle (or updated case management bundle) at least seven working days prior to the case management conference.

There is no procedure for the filing of an SAPT in SICC proceedings.

At the appropriate stage, the court must fix a period in which the claimant is to set down the action for trial.

Law stated - 19 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Yes, under the ROC 2021, a defendant may challenge the jurisdiction of the courts on the ground that the parties have agreed to refer their dispute to arbitration or on any other ground. In such an event, the defendant need not file and serve a defence on the merits but must file and serve a defence stating the ground on which the defendant is challenging the jurisdiction of the courts. The challenge to jurisdiction may be for the reason that (a)

the courts have no jurisdiction to hear the action; or (b) the courts should not exercise jurisdiction to hear the action.

At the case conference, the court must first deal with any objection to its jurisdiction. Subsequently, the court may direct the defendant to file and serve the necessary application with a supporting affidavit within 14 days after the date of the case conference, and for the claimant to file and serve an affidavit in reply within 14 days after the defendant has filed its supporting affidavit. No further affidavits can be filed without the court's approval. The court will then fix the application for hearing on a date no later than 14 days after all affidavits have been filed and served on the respective parties.

If the defendant challenges the jurisdiction of the court and fails, the court will direct the defendant to file its defence or affidavits on the merits.

A party can apply for anti-suit injunctions to compel a party who may be subject to the jurisdiction of the court to refrain from instituting or continuing with proceedings in a foreign court. However, the courts have stated that the jurisdiction of the Singapore court in granting anti-suit injunctions is to be exercised with caution since such an order indirectly affects the foreign court (see *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 (*Lakshmi*), *BCS Business Consulting Services Pte Ltd and others v Baker, Michael A (executor of the estate of Chantal Burnison, deceased)* [2022] SGCA(I) 7 (*BCS Business*)).

As set out in *Lakshmi*, the courts will consider the following non-exhaustive factors in determining whether they should grant an anti-suit injunction:

- whether the defendants are amenable to the jurisdiction of the Singapore court;
- the natural forum for resolution of the dispute between the parties;
- the alleged vexation or oppression to the claimant if the foreign proceedings are to continue;
- the alleged injustice to the defendant, since an injunction would deprive the defendant of the advantages sought in the foreign proceedings; and
- whether the institution of the foreign proceedings is in breach of any jurisdiction agreement between the parties.

The court in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 stated that where there is a jurisdiction clause which designates Singapore courts as the forum for litigation, the courts will generally readily grant an anti-suit injunction if it can be shown that there was a breach of such an agreement, unless there are strong reasons not to, or the application for an anti-suit injunction was unreasonably delayed with foreign proceedings being at an advanced stage. However, where there is no jurisdiction clause in favour of Singapore courts, the courts will generally be reluctant to grant an anti-suit injunction to stay foreign proceedings (see *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] SGHC 92).

Examples of situations where anti-suit injunctions have been granted include (see *BCS Business*):

- where the injunction respondent seeks to re-litigate abroad a matter on which the court has already given judgment; and
-

where the injunction respondent seeks to litigate abroad a matter that could and should have been put before and decided by the court in prior proceedings.

Law stated - 19 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Under the ROC 2021 and practice directions, the courts will exert greater control over the pace of litigation, instead of leaving it to the parties to do so. Parties will be expected to assist the court and conduct their cases in a manner that will help achieve the five Ideals set out in the ROC 2021. Where there is non-compliance with any rule, any practice directions or any order or direction by the court, the court has the power to dismiss, stay or set aside the proceedings, and give an appropriate judgment or order even if the non-compliance could be compensated by costs, if the non-compliance is inconsistent with any of the Ideals in a material way.

For civil proceedings, parties are only allowed to extend time limits for a particular step/filing once by consent and in writing for a maximum period of 14 days. If parties require a longer extension of time or wish to extend subsequent timelines, the parties must apply to the courts for permission to do so. The court can either extend time limits, or to shorten the period within which a party is required by the ROC 2021, judgment, order or direction to do any act in the proceedings. The court may extend time limits whether the application for extension of time is made before or after the expiration of the relevant period.

For SICC proceedings, parties may extend a time limit with the written consent of all parties concerned, without an order of the court. After obtaining such consent, the party must notify the court of the extension in consent within one working day. The court has the power to either extend time limits in litigation, or to shorten the period within which a party is required by the SICC Rules, judgment, order or direction to do any act in the proceedings. The court may extend time limits whether the application for extension of time is made before or after the expiration of the relevant period. The court has the power to make any such order as it considers just and appropriate for the just, expeditious and economical disposal of any proceedings.

Law stated - 19 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Under the ROC 2021, there is no general obligation for parties to a civil proceeding to produce documents, unless the documents will be relied on by the party, or are objectively adverse to a party's case. The court has the power to order production of the following documents at a case conference, within 14 days after the date of the case conference:

- all documents that a party will be relying on;
- all known adverse documents, including documents that a party ought reasonably to know are adverse to its case and private or internal correspondence; and
- documents agreed between the parties, if applicable.

A requesting party may apply for the production of a specific document or class of documents in another party's possession or control. The court may order the party to produce the original or a copy of a specific document in the party's possession or control, if the requesting party properly identifies the requested documents and shows that the requested documents are material to the issues in the case. If the requested documents are not in the party's possession or control, the court may order that party to file an affidavit stating this and whether that party previously had possession or control of such documents, and if so, what has become of the requested documents.

In special cases, the court may order a party to produce documents that merely lead a party on a train of inquiry to other documents or documents that are part of a party's private or internal correspondence. The court may also order the production of a party's private or internal correspondence if they are known adverse documents.

The court will not order that parties produce:

- privileged documents; and
- documents where production would be contrary to the public interest.

Where the court orders parties to produce documents, parties have a continuing obligation to produce such documents within 14 days after the document comes into the party's possession or control, or at any time during the course of proceedings.

The court may allow a broader scope of discovery only where it determines that it is in the interests of justice to do so, and can order the production of documents of its own accord and at any time. In exercising its powers to order the production of documents, the court must bear in mind, in addition to the Ideals, the following principles:

- a claimant is to sue and proceed on the strength of the claimant's case and not on the weakness of the defendant's case; and
- a party who sues or is sued in court does not thereby give up the party's right to privacy and confidentiality in the party's documents and communications.

Law stated - 19 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The Evidence Act 1893 provides that communications between an advocate or solicitor and their client made in the course and for the purpose of their employment as advocate or solicitor may not be disclosed without the client's express consent. The Evidence Act

makes clear that this duty extends to a legal counsel in an entity. However, the duty of non-disclosure does not extend to any communication made in furtherance of any illegal purpose or any fact observed showing that any crime or fraud has been committed since the commencement of the employment.

In addition, the common law principles of litigation privilege and the privilege attaching to without prejudice communications continue to apply under Singapore law insofar as they are not inconsistent with the Evidence Act. Litigation privilege protects from disclosure at discovery any documents created when litigation is reasonably contemplated and for the predominant purpose of litigation. Without prejudice communications privilege protects communications made in the course of genuine negotiations to resolve disputes.

Under the rules governing SICC proceedings, if all parties agree that any rule of evidence in Singapore law shall not apply and such other rules of evidence (if any), whether found in foreign law or otherwise, shall apply instead, a party may apply to the SICC to make an order to that effect. Examples of substantive rules of evidence under Singapore law that parties may agree to disapply include rules relating to privilege.

Law stated - 19 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

As a general rule, the trial in an originating claim, assessment of damages or value, or taking of accounts must be decided on the basis of the witnesses' AEICs, including expert witnesses.

In a special case, the court may allow a witness's evidence-in-chief to be given orally instead of by AEIC (witness statements).

Parties may also apply for the issuance of an order to attend court (ie, subpoena) for witnesses to testify at trial, and in such cases, the evidence-in-chief of the witness answering such an order would be given by oral testimony. Witnesses may also be ordered to produce documents.

Parties are to inform the court during the case conference if they intend to rely on expert evidence. No expert evidence may be used in court unless the court approves. The parties must consider whether expert evidence will contribute materially to the determination of any issue that relates to scientific, technical or other specialised knowledge and whether such issue can be resolved by an agreed statement of facts or by submissions based on mutually agreed materials.

Under the ROC 2021, as far as possible, parties must agree on one common expert. Except in a special case and with the court's approval, a party may not rely on expert evidence from more than one expert for any issue. In a case where there is more than one expert, the court may order that all or some of the experts testify as a panel and give their views on the issues referred to them and comment on one another's views. The court may order cross-examination and re-examination of all or some of the experts in the panel in any

sequence as the court thinks appropriate, whether before or after the experts have testified as a panel.

Under the rules governing SICC proceedings, if all parties agree that any rule of evidence in Singapore law shall not apply and such other rules of evidence (if any), whether found in foreign law or otherwise, shall apply instead, a party may apply to the SICC to make an order to that effect.

Law stated - 19 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

A witness' AEIC may be disregarded by the court if the maker does not attend court for cross-examination, unless the parties otherwise agree. Witnesses ordered to attend court (ie, subpoenaed) to testify at trial give their evidence through their AEICs (if any) and also orally. Witnesses may also be ordered to produce documents without the obligation to attend court personally.

Witnesses and experts may not give oral evidence-in-chief at the trial except in relation to matters that have arisen after their AEIC was filed or unless the court otherwise orders.

An action commenced by originating claim will generally be decided at a trial involving oral evidence and cross-examination.

Under the rules governing SICC proceedings, if all parties agree that any rule of evidence in Singapore law shall not apply and such other rules of evidence (if any), whether found in foreign law or otherwise, shall apply instead, a party may apply to the SICC to make an order to that effect. Examples of substantive rules of evidence under Singapore law that parties may agree to disapply include rules relating to the examination of witnesses.

Law stated - 19 May 2025

Interim remedies

13 | What interim remedies are available?

The court has wide powers to order a variety of interim remedies, including:

- prohibitory injunctions to restrain the defendant from engaging in certain conduct;
- mandatory injunctions to compel the defendant to perform certain acts;
- Mareva injunctions (freezing orders) to prevent the defendant from dissipating assets so as not to frustrate any judgment that the claimant may eventually obtain against them;
- search orders to require the defendant to allow the claimant or their representatives to enter, search and remove from their premises material or evidence relating to the subject matter of the action; and

- interim payments for a proportion of the damages claimed or debt owed.

Where the claimant has applied for summary judgment, the court may give the defendant leave to defend the claim subject to conditions, including the provision of security for the claim as well as costs and interest.

Under section 12A of the International Arbitration Act 1994, the High Court may make orders for interim remedies in support of international arbitrations, irrespective of whether the place of arbitration is in Singapore.

Law stated - 19 May 2025

Remedies

14 | What substantive remedies are available?

Common substantive remedies available to a claimant include:

- damages: to compensate the loss suffered by the claimant as a result of the defendant's actions;
- specific performance: to require the defendant to perform the terms of the contract that were breached;
- injunction: to restrain or compel conduct on the part of the defendant;
- account: to recover profits taken as a result of breach of duty; and
- declaration: a pronouncement by the court of the legal positions between parties.

Where money is payable under an order, it carries interest as agreed between parties, or if there is no agreement on interest, simple interest at 5.33 per cent per year. Interest is to be calculated from the date of the order until the date of payment.

Law stated - 19 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Under the Rules of Court 2021 (ROC 2021), a party has a duty to consider amicable resolution of the dispute before commencing an action or appeal or during the course of an action or appeal. Once proceedings are commenced, parties are required to fill in a pre-case conference questionnaire (PCQ) stating whether amicable resolution has been attempted and if so, when, and the form of, amicable resolution attempted by the parties. The PCQ is to be submitted before the first registrar's case conference.

A party is entitled at any time in the proceedings to engage in confidential settlement discussions, which are not to be disclosed to the court. Prior to commencement and during the course of any action or appeal, a party to any proceedings has the duty to consider

amicable resolution of the party's dispute. Under Rule 5, ROC 2021, a party is to make an offer of amicable resolution before commencing the action unless the party has reasonable grounds not to do so. Any such offer of amicable resolution must be in writing, and must be open for acceptance within a reasonable period of time, and in any case, for at least 14 days unless the parties otherwise agree. If the offer of amicable resolution does not state an expiry date, it shall expire once the court has determined the merits of the dispute. The terms of an offer which has been made and not accepted must not be relied upon or made known to the court until after the court has determined the merits of the action and is dealing with the issue of costs.

An offer of amicable resolution must not be rejected by the other party unless it has reasonable grounds to do so. If a party informs the court that it does not wish to attempt to resolve the dispute by amicable resolution, the court may order the party to submit a sealed document setting out the party's reasons for such refusal. The sealed document will only be opened by the court after the determination of the merits of the action and its contents may be referred to by the court when deciding the issue of costs.

The court has the power to order the parties to attempt to resolve the dispute by amicable resolution, having regard to the Ideals under the Rules of Court 2021 (ROC 2021) and other relevant circumstances such as whether any of the parties have refused to attempt to resolve the dispute. The court may suggest solutions for the settlement of the dispute at any time.

In SICC proceedings, the parties must consider the possibility of alternative dispute resolution and be prepared to inform the court of the suitability of alternative dispute resolution at the first case management conference, including:

- whether the parties previously attempted alternative dispute resolution;
- whether parties are amenable to making a genuine attempt at alternative dispute resolution;
- whether there are other related disputes and the possibility of a global settlement;
- whether the parties are seeking specific court-ordered remedies;
- whether the parties have interests that cannot be satisfied by court ordered remedies; and
- whether the parties are in a subsisting commercial relationship the preservation of which is important.

Law stated - 19 May 2025

Enforcement

16 | What means of enforcement are available?

Under the ROC 2021, where an order requires a person to pay money, to do or stop doing an act, or to perform a duty, the court must give that person a reasonable time within which to comply unless the court intends for these to be performed on the day that the order

is given. When there is no time specified, it is deemed that the order requires immediate compliance.

The ROC 2021 consolidates all methods of enforcement into a single enforcement order. A party seeking to enforce a judgment must take out a single application for one or more methods of enforcement. Common methods of enforcement include:

- enforcement order for attachment of a debt (formerly termed as garnishee order);
- stay of enforcement (formerly termed as stay of execution);
- enforcement order (formerly termed as writ of execution);
- enforcement order for possession of property (formerly termed as writ of possession); and
- enforcement order for seizure and sale of property (formerly termed as writ of seizure and sale).

The enforcement applicant may apply to the court by summons without notice for an enforcement order not earlier than three days from service of the court order on the enforcement respondent. If the enforcement applicant is seeking multiple methods of enforcement, it must state whether the sheriff is to enforce them in any particular sequence or whether all or some methods are to be enforced simultaneously. The supporting affidavit must contain a written undertaking from the enforcement applicant's solicitors (or the applicant, if not represented) to indemnify the sheriff against all claims, costs and expenses arising from complying with the enforcement order, to pay upon request all charges, commissions, expenses and fees incurred by or payable to the sheriff in complying with the enforcement order, and to deposit the money requested by the sheriff before the sheriff complies with the enforcement order and from time to time.

An enforcement order is valid for 12 months from the date of issue, and may be extended by the court for a period of 12 months if the application is made before the enforcement order would have expired. The enforcement order ceases to be valid if satisfaction of the judgment is recorded by filing the consent of the judgment creditor, or the enforcement applicant gives written notice to the sheriff not to take further action on the enforcement order because the enforcement order has complied with all the terms of the court order or for any other reason.

Failure to comply with an order of court may amount to contempt of court, and may be punished by sequestration of assets or committal. Further, the court may order that any acts required to be performed by an order of court be performed by another party or by a person appointed by the court at the cost of the party in default.

Law stated - 19 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

The general rule is that all trials in originating claims must be heard in open court and all cases in the Family Justice Courts are conducted in private. All applications and appeals to the Appellate Division or Court of Appeal must also be heard in open court. Notwithstanding the above, the court may hear any matter in court in private with attendance restricted to the parties, their legal representatives and any other person which the court allows in the interests of justice.

Originating applications, on the other hand, are usually heard in chambers, unless the court orders otherwise. Proceedings may be held in private where it is expedient in the interests of justice, public safety or propriety, or some other sufficient reason exists to do so. Subject to written law or practice directions, every originating application, summons, assessment of damages, taking of accounts and appeal must be heard in chambers. The court has the power to allow any person to attend any hearing in chambers subject to space, security and the interests of justice.

Court users can apply to inspect files and court documents that have been made public. Litigants can inspect their own case files and request for copies of court documents. A non-party may inspect a case file with leave of court upon filing a request stating their interest in the matter. Details of all originating processes, writs of execution and distress and appeals to the Court of Appeal are available to the public without leave of court.

To prevent an inspection of a case file by a non-party to the case file, an application to seal the case file or court documents or both may be made according to applicable rules and procedures. Such applications will be heard by a High Court judge, who may grant the order with or without conditions.

Law stated - 19 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The court has full discretion to order costs, whether in principle or amount. Under the ROC 2021, the court must have regard to all relevant circumstances in exercising its power to fix or assess costs, including:

- efforts made by the parties at amicable resolution;
- complexity of the case and the difficulty or novelty of the questions involved;
- skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
- urgency and importance of the action to the parties;
- number of solicitors involved in the case for each party;
- conduct of the parties;
- principle of proportionality; and
- stage at which the proceedings were concluded.

The court may order two or more parties' costs to be set off against one another so that only the balance has to be paid. The court may also stay or dismiss any application, action or appeal or make any other order as the court deems fit if a party refuses or neglects to pay any costs ordered within the specified time, whether the costs were ordered in the present proceedings or in some related proceedings.

Generally, the court will order costs of any proceedings in favour of a successful party, except when it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs. The court may also disallow or reduce a successful party's costs or order that party to pay costs if:

- that party has failed to establish any claim or issue which that party has raised in any proceedings, thereby unnecessarily increasing the amount of time taken, the costs or the complexity of the proceedings;
- that party has done or omitted to do anything unreasonably;
- that party has not discharged that party's duty to consider amicable resolution of the dispute or to make an offer of amicable resolution in accordance with the ROC 2021; or
- that party has failed to comply with any order of court, any relevant pre action protocol or any practice direction.

The costs payable by any party to any other party must be fixed by the court that heard the matter after an oral hearing or by way of written submissions from the parties, unless the court thinks fit to direct an assessment of costs. For costs in relation to trials of originating claims and originating applications involving cross-examination, parties must file a cost schedule setting out with sufficient particularity the quantum of party-and-party costs and disbursements that the party intends to claim in the event that the party succeeds. Different costs scales generally apply depending on the nature of the civil claim in question (ie, torts, commercial, equity and trusts, construction, intellectual property etc). Parties must have regard to the costs guidelines set out in the Supreme Court Practice Directions 2021. That being said, nothing in the costs guidelines is intended to guide or influence the charging of solicitor-and-client costs.

For all civil claims, the amount of costs any party is entitled to recover is the amount allowed after assessment on a standard basis, unless it appears to the court appropriate to order costs to be assessed on an indemnity basis.

A defendant may apply for security for the defendant's costs of the action if the claimant:

- is ordinarily resident outside of the jurisdiction;
- is a nominal claimant who is suing for some other person's benefit (but not suing in a representative capacity) or is being funded by a non-party, and there is reason to believe that the claimant will be able to pay the defendant's costs if ordered to do so; or
- has not stated or has incorrectly stated the claimant's address in the originating claim or originating application, or has changed the claimant's address during the course of the proceedings, so as to evade the consequences of the litigation.

If the claimant is a corporation, the court may require sufficient security to be given where there is reason to believe that the company will be unable to pay the costs of a successful defendant.

In SICC proceedings, generally, a successful party is entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the successful party, subject to proportionality and reasonableness. In doing so, the court will consider all relevant circumstances, including:

- the complexity of the case and the difficulty or novelty of the questions involved;
- the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the counsel;
- the urgency and importance of the action to the parties;
- the number of counsel involved in the case for each party;
- the conduct of the parties;
- the amount or value of the claim;
- the stage at which the proceedings were concluded;
- the existence of any offer to settle, the date the offer was made, the terms of the offer and the extent to which the claimant's judgment is more favourable than the terms of the offer to settle;
- the existence of an agreement as to the amount of, basis for, or mechanics for, the determination of a costs award; and
- the estimates provided in a costs schedule.

The court in

Kiri Industries Ltd v Senda International Capital Ltd and another

[2022] 3 SLR 174 opined that generally, the SICC costs regime seeks to ensure that the successful litigant is not generally out of pocket for prosecuting their claim in a sensible manner. Thus, reasonably incurred costs will generally be recoverable from the unsuccessful party.

Law stated - 19 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Conditional fee arrangements (CFAs) were generally prohibited in Singapore until 4 May 2022 when amendments were made to the Legal Profession Act 1966 to allow for CFAs in the following types of legal proceedings:

- international and domestic arbitration proceedings;

- certain proceedings in the Singapore International Commercial Court; and
- related court and mediation proceedings.

The Legal Profession (Conditional Fee Agreement) Regulations 2022 implements safeguards relating to information that lawyers must provide to clients before entering into CFAs. Related amendments to the Legal Profession (Professional Conduct) Rules 2015 – see Rules 49A and 49B – have also been made. Legal practitioners are under a duty to disclose the existence of a third-party funding contract and the identity of the third-party funder to the court or tribunal, and to every other party to the proceedings, as soon as is practicable. Legal practitioners and law practices are also prohibited from having interests in relevant third-party funders and from receiving referral fees and commissions.

CFAs in Singapore are meant to enhance access to justice by providing businesses or individuals with additional funding options to pursue meritorious claims that they may otherwise not pursue. Such CFAs will not affect recovery of costs from the client by another party; contingency fee agreements where remuneration is payable as a percentage of the damages awarded will continue to be prohibited.

Third-party funding (TPF) was also generally prohibited in Singapore until 2017 when the Civil Law Act was amended and the common law torts of maintenance and champerty were abolished. In June 2021, the categories of proceedings for which TPF is permitted was extended to include the following:

- domestic arbitration proceedings;
- court proceedings arising from or connected with domestic arbitration proceedings;
- proceedings commenced in the SICC, for as long as those proceedings remain in the SICC;
- appeal proceedings arising from any decisions made in the SICC proceedings commenced (to which TPF has been permitted); and
- mediation proceedings relating to any of the above.

Funding may only be provided by an entity that meets the criteria for a qualifying third-party funder.

TPF is also permitted under specific circumstances in insolvency proceedings started in the Insolvency, Restructuring and Dissolution Act 2018 (IRDA). For example, the court approved a funding arrangement to pursue existing litigation for the benefit of a company in liquidation and held that the doctrine of maintenance and champerty had no application to the exercise of the statutory power of sale under section 272(2)(c) of the Companies Act (Chapter 50): see *Solvadis Commodity Chemicals GmbH v Affert Resources Pte Ltd* [2018] 5 SLR 1337.

Litigation may also be state funded if a party is financially eligible for legal aid rendered by the Legal Aid Bureau, which is part of the Ministry of Law.

Law stated - 19 May 2025

Insurance

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20 | Is insurance available to cover all or part of a party's legal costs?

After the event (ATE) insurance is available in Singapore. ATE insurance covers the costs incurred in defending or pursuing litigation, in particular offsetting the opponent's costs and disbursements if the insured is unsuccessful, and may be purchased after a legal dispute has arisen.

Law stated - 19 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Singapore does not have a broad process for class action. Representative action is the only form of group litigation in Singapore.

Under the ROC 2021, where numerous persons have a common interest in any proceedings, such persons may sue or be sued as a group with one or more of them representing the group. Further, a representative action is usually only appropriate where the number of interested persons is too large for them to be joined as parties to a non-representative action.

Specific legislative provisions may provide for particular types of representative actions. One example is section 85 of the Building Maintenance and Strata Management Act 2004, which enables a management corporation to bring or defend proceedings on behalf of the subsidiary proprietors of a development.

Law stated - 19 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties may appeal against findings of both fact and law. However, an appellate court would be slow to reverse findings of fact and will do so only if the findings are plainly wrong or against the weight of the evidence.

Under the ROC 2021, the broad objectives are to move parties quickly from procedural skirmishes to the main battle on the merits, requiring less formality for appeals against applications, and saving costs and reducing prolixity by requiring only materially relevant documents to be filed with the imposition of page limits. All appeals in the Supreme Court are split into two chapters:

- appeals from applications in actions (including decisions made pursuant to matters within an SAPT); and
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appeals from judgments and orders after trial (this also includes hearings on the merits of an originating application).

The Court of Appeal, as the highest appellate court, hears all criminal appeals against decisions made by the General Division in the exercise of its original criminal jurisdiction, prescribed categories of civil appeals and appeals that are to be made to the Court of Appeal under written law.

The General Division of the High Court hears appeals from a decision or order made by a district judge or magistrate in the State Courts (including the small claims tribunal and ECT).

The Appellate Division of the High Court hears all civil appeals that are not allocated to the Court of Appeal under the Sixth Schedule of the SCJA, and any civil appeal or other process that any written law provides is to lie to the Appellate Division.

A party may not always have a right of appeal. An appeal may lie as a matter of right (with or without the leave of court), or there may be no right of appeal at all. For example:

- orders made by district court or magistrates' court that are appealable only with leave: see sections 21(1) and 83(1), and the Third Schedule of the SCJA;
- decisions of the General Division of the High Court that are not appealable: see sections 29(b), 80(2A)(i) and 83(1) and Fourth Schedule of the SCJA. Examples include a judgment/order made by consent of the parties, an order by a judge giving or refusing further and better particulars, and an order by a judge refusing security for costs;
- decisions of the General Division of the High Court that are appealable only with leave and certain exceptions: see sections 29A and 83(1) and Fifth Schedule of the SCJA. Some examples include an order by a judge giving unconditional leave to defend any proceedings, an order by a judge giving or refusing discovery or inspection and an order by a judge refusing a stay of proceedings;
- civil appeals to be made to Court of Appeal: see sections 29C and 83(1) and Sixth Schedule of the SCJA. Some examples include an appeal arising from a case relating to the law of arbitration, a case relating to the law of patents and appeals against a decision of the SICC; and
- cases where the decision of the Appellate Division of the High Court is not appealable: see sections 46(1) and 83(1), and Ninth Schedule of the SCJA.

For SICC proceedings, parties may contractually exclude or limit the right of appeal against a judgment or order of the SICC. For applications in SICC proceedings, each party is allowed to only file one appeal for each application in the proceedings unless the court orders otherwise.

Except insofar as the lower court or the appellate court may otherwise direct, an appeal does not operate as a stay of enforcement or of proceedings under the decision of the lower court.

Law stated - 19 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment may be recognised and enforced under the Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA), the Choice of Court Agreements Act 2016 (CCAA), or under the common law by way of commencing an action on the judgment itself.

The REFJA apply only to judgments from the gazetted countries under the respective legislation. Under the REFJA, a foreign judgment can generally be registered if it is final and conclusive between the parties, is for a sum of money, and applicable procedural requirements are complied with. A foreign judgment may be enforced as if it were a judgment of the Singapore courts only after it has been registered.

Enforcement of a foreign judgment under the REFJA or common law may not be allowed in certain circumstances, for example, where the foreign judgment has been obtained by fraud or in breach of principles of natural justice.

The CCAA was enacted to implement the Hague Convention of 30 June 2005 on Choice of Court Agreements (the Convention) and came into force on 1 October 2016. The CCAA applies to judgments given in international civil or commercial cases where there is an exclusive choice of court agreement that designates a court of a contracting state to the Convention. However, it does not apply to any interim judgments or where the exclusive choice of court agreement was concluded before the Convention entered into force in that contracting state. Under the CCAA, a judgment given by a court of a contracting state to the Convention (other than Singapore) will be recognised and enforced if it has effect and is enforceable in the state in which the judgment originated. However, there are certain mandatory and discretionary grounds for refusing recognition or enforcement. For example, it is mandatory to refuse recognition or enforcement of a foreign judgment obtained by fraud in connection with a matter of procedure.

Law stated - 19 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The procedure to get an order for evidence to be obtained in Singapore for use in civil proceedings in another jurisdiction is governed by the Evidence (Civil Proceedings in Other Jurisdictions) Act 1979 and Order 55 of the ROC 2021.

An application must be made to the High Court supported by affidavit exhibiting a letter of request issued by or on behalf of a court or tribunal exercising jurisdiction in a country or territory outside Singapore.

The Singapore court may order the provision for:

- examination of witnesses, orally or in writing;

- production of documents;
- inspection, photographing, preservation, custody or detention of any property;
- taking samples of any property and carrying out of experiments on or with any property;
- medical examination of any person; and
- taking and testing of blood samples.

The deposition of the witness will be sent to the registrar, who will send the deposition, together with a certificate sealed with the seal of the Supreme Court, to the foreign court or tribunal.

Law stated - 19 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

In Singapore, both the Arbitration Act 2001 (AA) and the International Arbitration Act 1997 (IAA) form part of the arbitration law.

Non-international arbitrations are governed by the AA, unless parties agree that the IAA or the UNCITRAL Model Law on International Commercial Arbitration (the UNCITRAL Model Law) shall apply instead. International arbitrations are generally governed by the IAA, unless parties agree that the AA shall apply instead.

The IAA essentially enacts (and incorporates as its First Schedule) the 1985 UNCITRAL Model Law with some statutory modifications. Various elements of the 2006 UNCITRAL Model Law have since also been incorporated into the IAA. The IAA also gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

The AA does not expressly enact the UNCITRAL Model Law. That said, it has undergone various modifications in line with many principles contained in the UNCITRAL Model Law.

The greatest difference between the AA and the IAA is the level of judicial intervention permitted. For instance, a stay of judicial proceedings is mandatory in an international arbitration (IAA, section 6(1) and UNCITRAL Model Law, article 8(1), IAA, First Schedule) but discretionary in a domestic arbitration (AA, section 6(2)). An appeal to the courts may be made against a domestic award for an error of law (AA, section 49(1)) but an international award under the IAA cannot be challenged on that basis. The court also has the power to extend contractual limits for the commencement of a domestic arbitration (AA, section 10) but there is no equivalent power under the IAA or the UNCITRAL Model Law.

Law stated - 19 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing. An agreement concluded orally or by conduct or any other means may also be a valid arbitration agreement provided that the contents of such an agreement are recorded in any form (IAA, section 2A). For instance, in *R1 International Pte Ltd v Lonstroff AG* [2015] 1 SLR 521, the Singapore Court of Appeal had to consider whether a set of terms (which included an agreement to arbitrate in Singapore) set out in a contract note that was sent by R1 International to Lonstroff AG shortly after the deal had apparently been agreed was incorporated as part of the contract between the parties and, if so, whether an anti-suit injunction ought to be made against Lonstroff AG from pursuing a case in the Swiss courts. The Court of Appeal held that the contract note was part of the contract between the parties – it was improbable that the parties expected to contract purely on the bare bones of the prior email confirmations – and as such, those terms (including the agreement to arbitrate) would have, as regards the industry practice and size and scope of the subject matter of the supply contracts in question, probably expected terms such as the agreement to arbitrate in Singapore to be incorporated into the more detailed contract note.

Parties are also increasingly including in their arbitration agreements a specific statement as to their express choice of law to govern the arbitration agreement. In the absence of an express choice of law to govern the arbitration agreement, the Singapore High Court (see *BCY v BCZ* [2016] SGHC 249 and *BNA v BNB and another* [2020] 1 SLR 456) has endorsed the approach of the English Court of Appeal in *SulAmérica Cia Nacional De Seguros SA and others v Enesa Engenharia SA and others* [2012] 1 Lloyd's Rep 671, holding that where the arbitration agreement is a clause forming part of a main contract, it is reasonable to assume that the contracting parties intend for the same system of law to govern both the arbitration agreement and the main contract. However, it remains to be seen whether the Singapore courts will continue to adopt this approach following the decision of the English Court of Appeal in *Enka Insaat ve Sanayi AS v OOO 'Insurance Company Chubb' and others* [2020] EWCA Civ 574.

Law stated - 19 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

For arbitrations involving one claimant and one respondent, where the parties cannot agree, the IAA and the Singapore International Arbitration Centre (SIAC) Rules provide for the default appointment of a single arbitrator by the SIAC president as appointing authority (IAA, section 8(2) and 8(3) and SIAC Rules 2025, Rule 21.2). Under the SIAC Rules 2025, the default provision is for a single arbitrator, but the SIAC registrar has the discretion to appoint three arbitrators if the dispute warrants it (SIAC Rules 2025, Rule 19.1). Section 9A(2) of the IAA and Rule 22.3 of the SIAC Rules 2025 provide that the presiding arbitrator shall be appointed by the President unless the parties have agreed upon another procedure

for the nomination of the presiding arbitrator or if such agreed procedure does not result in a nomination of the presiding arbitrator within the period agreed by the parties or set by the Registrar.

For multiparty arbitrations (three or more parties) which require three tribunal members, section 9B of the IAA (introduced by way of amendments on 1 December 2020) provides for a default appointment mechanism in situations where the parties have not agreed any procedure for appointing the tribunal. In brief:

- all claimants must jointly appoint one arbitrator. They must notify the respondents of their joint appointment when they refer the dispute to arbitration, for example, when filing their request for arbitration or notice of arbitration;
- all respondents must jointly appoint a second arbitrator and inform the claimants of their joint appointment within 30 days of receipt by the last respondent of the request for arbitration or notice of arbitration;
- if either of the above appointments is not made by the parties within the time limits specified, or if the claimants or respondents cannot come to a joint appointment, or if any party requests, the appointing authority must appoint all three arbitrators. If that occurs, the appointing authority may, having regard to all relevant circumstances, reappoint or revoke the appointment of any arbitrator already appointed;
- assuming two arbitrators have been appointed, within the time limits, by the claimants and respondents respectively, they will then choose the third arbitrator (who shall be the presiding arbitrator) within 60 days of receipt by the last respondent of the request for arbitration or notice of arbitration; and
- if the two party-appointed arbitrators fail to agree on the appointment of the third arbitrator within the 60-day time limit, the appointing authority must, upon the request of any party and having regard to all relevant circumstances, appoint the third arbitrator.

Law stated - 19 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

For arbitrations administered by the SIAC, parties are free to choose arbitrators of their choice, whether or not from the SIAC panel of arbitrators. Nonetheless, the SIAC maintains a panel of arbitrators adept in meeting the needs of complex arbitration for parties' selection. The panel of arbitrators comprises experienced, qualified and distinguished arbitrators from over 40 jurisdictions, including professionals from both legal and non-legal backgrounds such as engineers, quantity surveyors and master mariners. The SIAC also maintains a specialist panel of arbitrators for intellectual property disputes.

Law stated - 19 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The AA and the IAA allow parties and the arbitral tribunal wide discretion to decide on the procedure to be followed for the arbitration. However, both statutes contemplate the exchange of statements of claim and defences and provide that parties must be given sufficient advance notice of any hearings or meetings of the arbitral tribunal, that all statements, documents or other information supplied by one party to the arbitral tribunal must also be supplied to the other party, and that any expert report or evidentiary document upon which the arbitral tribunal may rely in making its decision must be communicated to the parties.

Law stated - 19 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Before and during an arbitration, the powers of the court will generally be exercised in support of the arbitration, and with the agreement of the parties or the permission of the arbitral tribunal. The court may also be asked to decide the question of whether the arbitral tribunal has jurisdiction to hear the arbitration following a decision on the question by the arbitral tribunal.

However, courts will not grant security for costs or the discovery of documents before arbitration proceedings have commenced. The court has no power to grant an order for the discovery of documents prior to the commencement of the arbitration (ie, pre-arbitral discovery) (see *Equinox Offshore Accommodation Ltd v Richshore Marine Supplies Pte Ltd* [2010] SGHC 122).

If, however, the potential claimant is still seeking to determine whether they have a cause of action, the court may, in appropriate cases, still be in a position to order pre-action discovery even where there is an arbitration clause in the contract between the parties (see *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25). The Singapore Court of Appeal, however, cautioned that where an arbitration clause is prima facie applicable, absent exceptional circumstances, a court will not grant pre-action discovery or pre-action interrogatories, especially where both the parties involved as well as the issues in dispute between them were one and the same, since to do so would amount to an abuse of process.

Orders made by an arbitral tribunal may be enforced by the Singapore High Court 'as if they were orders made by the court' (AA, section 28(4) and IAA, section 12(6)). Such orders may include an order granting security for costs, discovery of documents and discovery of facts (ie, interrogatories), taking evidence by way of affidavit, or measures for the preservation of evidence (AA, section 28 and IAA, section 12).

The court may also grant interim relief in aid of arbitrations that are seated outside Singapore (IAA, section 12A). The orders of an emergency arbitrator in Singapore may

be enforced in Singapore as though they were orders of an arbitral tribunal (IAA, section 12(6) read with section 2(1)).

The court will generally not interfere with the exercise of the tribunal's discretion to make interlocutory orders. If the tribunal refuses to make such orders, the court will not compel the tribunal to make them.

The court will not set aside interlocutory orders made by a tribunal (see *PT Pukuafu Indah and others v Newmont Indonesia Ltd and another* [2012] 4 SLR 1157).

The court has the power to issue orders to attend or orders to produce documents (ie, subpoenas) to witnesses within the jurisdiction to testify or produce documents at arbitral proceedings (AA, section 30 and IAA, section 13). It may also intervene on various grounds, such as deciding on a challenge as to the arbitrator's impartiality, independence, hearing an appeal against a tribunal's decision on its jurisdiction and setting aside the award.

The court also has the power to enforce duties of confidentiality. In December 2020, the IAA was amended to add section 12(1)(j) under which a tribunal may make orders to enforce any obligation of confidentiality:

- that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;
- under any written law or rule of law; or
- under the rules of arbitration (including the rules of arbitration of an institution or organisation) agreed to or adopted by the parties.

Such orders may, by leave of the General Division of the Singapore High Court, be enforceable in the same manner as if they were orders made by a court, and where leave is so given, judgment may be entered in terms of the order or direction (IAA, section 12(6)).

Law stated - 19 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Arbitrators under both the AA and the IAA have powers to make orders for the provision of security for costs, the preservation and interim custody of any evidence, and the preservation, interim custody or sale of any property that is or forms part of the subject matter of the dispute. In addition, the IAA also gives the arbitral tribunal the power to order security of the amount in dispute, to make orders for ensuring that any award that may be made is not rendered ineffectual by the dissipation of assets, and for any interim injunction or other interim measure (IAA, section 12(1)).

The SIAC Rules 2025 provide that a party in need of emergency interim relief may apply for the appointment of an emergency arbitrator prior to the constitution of the arbitral tribunal (SIAC Rules 2025, Rule 30.2 and Schedule 1).

Law stated - 19 May 2025

Award

32 | When and in what form must the award be delivered?

Although neither the IAA nor the AA prescribes a time limit within which an award should be rendered, a tribunal should conduct the arbitration ‘without undue delay’ (UNCITRAL Model Law, article 14, IAA, First Schedule). Similar provisions can be found in the AA (section 16). There does not appear to be any Singapore case law defining what would amount to undue delay. In *Coal & Oil Co LLC v GHCL Ltd* [2015] 3 SLR 154, the Singapore High Court found that a 19-month delay in the release of the award did not violate any rule of natural justice.

Under the SIAC Rules 2025, within 30 days of the date of submission of the last directed oral or written submission in respect of the matters to be decided in an award, the Tribunal must provide the parties and the SIAC Secretariat with an estimate of the time within which it proposes to submit the draft award for scrutiny. The draft form of the award must be submitted to the SIAC Secretariat not later than 90 days from the date of submissions of the last directed oral or written submissions in respect of the matters to be decided in an award (SIAC Rules 2025, Rule 53.1 and 53.2).

If the expedited procedure under Rule 14.1 of the SIAC Rules 2025 is adopted, the tribunal must render its award within six months from the date when the tribunal is constituted, unless the registrar extends that period owing to exceptional circumstances (SIAC Rules 2025, Third Schedule, paragraph 16).

The AA and IAA prescribe that the award must fulfil the following requirements (UNCITRAL Model Law, article 31, IAA, First Schedule and AA, section 38):

- the award must be made in writing and signed by the arbitrators (in the case of two or more arbitrators, by all the arbitrators or the majority of the arbitrators provided that the reason for any omitted signature of any arbitrator is stated);
- the award must state the reasons for the award, unless the parties have agreed that no reasons are to be given or the award is one on agreed terms;
- the award must state the date of the award and the place of arbitration; and
- a copy of the award shall be delivered to each party to the proceeding.

Law stated - 19 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

An award is challenged by making an application to the Singapore High Court to set aside the award. Unless a correction to the award is sought, the application must be made within three months of the date the award is received by the applying party (UNCITRAL Model Law, article 34(3), IAA, First Schedule). The Singapore courts have no power to extend this time limit, which is absolute; they cannot even do so in cases of fraud – see *Bloomberry*

Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another [2021] SGCA 9.

The three-month period may, however, run from the date that a legitimate application to correct an award is made under article 33 of the UNCITRAL Model Law (see UNCITRAL Model Law, article 34(3), IAA, First Schedule), namely, one that validly falls under the provision and is not in truth a request for the tribunal to review or revisit its decision – see *BRS v BRQ and another and another appeal* [2021] 1 SLR 390. Where the application for correction does not fall legitimately under article 33, the time in which an application for setting aside must be made remains three months from the date that the award is received by the applying party.

The grounds for setting aside are stated in article 34 of the UNCITRAL Model Law, supplemented by two additional grounds set out in section 24 of the IAA.

Article 34 of the UNCITRAL Model Law provides that the award may be set aside on the following grounds:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement was not valid;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the proceedings and was unable to present its case;
- the award dealt with a dispute not falling within the terms of the arbitration agreement;
- the tribunal was improperly constituted;
- the subject matter of the arbitration was not capable of settlement by arbitration; or
- the award was contrary to public policy.

Under section 24 of the IAA, the following are two further grounds for setting aside an award:

- the making of the award was induced or affected by fraud or corruption; or
- a breach of natural justice occurred in connection with the making of the award, by which the rights of a party were prejudiced.

Under the AA, unless the parties have agreed otherwise, a party may appeal against an award on a question of law arising out of an award (AA, section 49(1)). If the parties agree for any reason to dispense with the tribunal giving reasons for the award, that agreement is to be treated as an agreement to exclude the jurisdiction of the Court under this section. That said, a question of law does not arise merely because there was an error in the arbitrator's application of the law. It must be shown that there is a finding of law that the parties had disputed and required the guidance of the court to resolve, namely, 'a point of law in controversy which has to be resolved after opposing views and arguments have been considered'; this is a high threshold to meet – see, for example, *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [1993] 2 SLR(R) 208 and *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd* [2020] SGHC 81 at [36]–[37].

An award will not be set aside for breach of an agreed procedure if the non-observance is derived from the applicant's own doing, or if the challenge to the award is against the

arbitral tribunal's procedural orders or directions that fall within the exclusive domain of the arbitral tribunal – see *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114.

Neither will an award be easily set aside for allegedly being in conflict with the public policy of Singapore (UNCITRAL Model Law, article 34(2)(b)(ii), IAA, First Schedule). In *Gokul Patnaik v Nine Rivers Capital Limited* [2021] 3 SLR 22, the Singapore International Commercial Court (SICC) – a division of the Singapore High Court – affirmed that the threshold for setting aside was very high. The SICC refused to set aside an award despite expert evidence that the underlying contract was illegal in another jurisdiction – the applicant had not demonstrated that the illegality would 'shock the conscience' or 'violate the most basic notions of morality and justice'.

In *Coal & Oil Co LLC v GHCL Ltd* [2015] 3 SLR 154, the Singapore High Court held that for an award to be set aside under article 34(2)(a)(iv) of the UNCITRAL Model Law, the procedural breach complained of could not be of an arid, technical or trifling nature; rather, it had to be a material breach of procedure serious enough that it justified the exercise of the court's discretion to set aside the award. This would often, though not invariably, require proof of actual prejudice. In that case, neither the tribunal's failure to declare the proceedings closed nor the 19-month delay in the release of the award violated any rule of natural justice. Further, such complaints did not rise to the level of gravity that the notion of public policy contemplated. The court also observed that an accusation against a tribunal for committing a breach of natural justice was a serious matter; as such, courts take a serious view of such challenges, and this was the reason those that had succeeded were few and far between and limited only to egregious cases where the error was 'clear on the face of the record'.

Further, in *ASG v ASH* [2016] 5 SLR 54, the Singapore High Court clarified that for an award to be set aside under article 34(2)(a)(ii) of the UNCITRAL Model Law, the party alleging a breach of natural justice must demonstrate 'a clear and virtually inescapable inference that the arbitrator did not apply his mind at all to [an important] aspect of that party's submissions' and that this set a 'high bar' for the party making the assertion of a breach of natural justice. It is only if the aggrieved party can show either that the tribunal might have realised the issue for determination but deliberately avoided grappling with it, or that the tribunal entirely overlooked the issue in question, that a breach of natural justice can be established. There is a 'crucial difference between a tribunal's decision to reject an argument, whether explicitly or implicitly, and its failure even to consider that argument. There will be no breach of natural justice if the tribunal reaches its decision implicitly, or reaches the wrong decision, or in fact fails to understand the argument'. Illustrating these principles, the Singapore Court of Appeal upheld the setting aside of a Singapore Chamber of Maritime Arbitration (SCMA) award on the grounds of the tribunal's breach of natural justice in disallowing the parties from calling any witness evidence, and convening a hearing for oral submissions only; the respondent had been denied a full opportunity to present its case – see *CBS v CBP* [2021] 1 SLR 935. Again, where a tribunal's decision on various issues falls outside the scope of the parties' submission to arbitration (eg, as stated in Terms of Reference under the International Chamber of Commerce Arbitration Rules) this would occasion a breach of natural justice justifying the setting aside of an award where the parties were deprived of a sufficient opportunity to present their case – see *CBX v CBZ* [2021] SGCA(I) 3.

In 2019, the Singapore Court of Appeal set aside an award rendered in a Permanent Court of Arbitration investor-state arbitration seated in Singapore for lack of jurisdiction under article 34(2)(a)(iii) of the UNCITRAL Model Law, stating that it could also have done so under article 34(2)(a)(i) of the UNCITRAL Model Law – see *Swissbourngh Diamond Mines (Pty) Ltd and others v Kingdom of Lesotho* [2019] 1 SLR 263. In that case, the court held that where an investor purports to accept a state's offer to arbitrate certain disputes under an investment treaty, but the dispute falls outside the scope of the offer as stated in the treaty, there would be a lack of jurisdiction, and the Singapore courts (as the supervisory courts at the seat) would have jurisdiction to set aside the award.

As made extremely clear by the Singapore Court of Appeal in *CAJ and another v CAI and another appeal* [2022] 1 SLR 505, in which the Singapore Court of Appeal (in unusual fashion) partially set aside an award due to the tribunal's breach of natural justice and acting in excess of its jurisdiction:

The court will exercise its power with restraint, setting aside awards only when there is good reason to do so. This strikes a balance between the need to respect the autonomy of arbitration proceedings and to give effect to the principle of minimal curial intervention, while ensuring that meritorious challenges are properly ventilated... A perusal of the published decisions of the Singapore court would show that, over the past 20 years, approximately only 20% of applications to set aside arbitral awards have been allowed. This attests to the fact that it is not common in Singapore for awards to be set aside, and the courts have only done so in exceptional cases when the grounds are clearly made out. In these cases, the awards were typically set aside on grounds of breach of natural justice and/or excess of jurisdiction.

In *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] SGHC 211, the Singapore High Court dismissed an application to set aside an arbitral award and reiterated the high bar to set aside arbitral awards in Singapore. The court underscored that it takes a serious view of applications alleging breaches of natural justice, but the bar for success on this ground remains exceptionally high. Such challenges are 'few and far between' and are confined to instances where the error is 'clear on the face of the record'.

In *DJO v DJP and others* [2024] SGHC(I) 24, the Singapore International Commercial Court set aside an arbitral award on the grounds of a breach of natural justice, finding that: (1) the presiding arbitrator displayed apparent bias by prejudging the dispute; and (2) the claimant was denied a fair, independent and impartial decision because the award's reasoning had been significantly reproduced from a separate award in a different arbitration. The court emphasised that natural justice is founded on two key principles: the rule against bias and the right to a fair hearing. Although copying and pasting from prior awards is not inherently sufficient to justify setting aside an award, the Court determined that the conduct reflected the tribunal's failure to properly exercise its mind and decide the issues independently and impartially. Consequently, it found that the tribunal approached the arbitration with a 'closed mind', breaching natural justice and the award was set aside.

Law stated - 19 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Awards made in Singapore, as well as awards made in countries that are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) 1958, may be recognised and enforced in Singapore by application to the Singapore High Court. Under the AA and IAA, a party may apply to the court for leave to enforce an award in the same manner as a judgment or order of court to the same effect. To give effect to the New York Convention, to which Singapore is a party, provisions governing the enforcement of foreign awards from other countries that are parties to the New York Convention have been incorporated into the IAA.

Singapore's political landscape has been relatively stable and its pro-arbitration and pro-enforcement stance enables parties to enforce an arbitral award relatively swiftly and with more success. That being said, Singapore courts are unlikely to recognise the enforcement of foreign awards that have been set aside at the place of arbitration. See, for example, the patron's speech of Singapore Chief Justice Sundaresh Menon at the Chartered Institute of Arbitrators London Centenary Conference on 2 July 2015 in which he stated the traditional view as being that 'an award which is set aside at the seat of arbitration has no legal existence or effect because the force of an award comes from the law of the seat, *ex nihilo nihil fit*'. This is one of the grounds upon which recognition and enforcement may be refused under the New York Convention, namely, that the award 'has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made' (New York Convention, article V(1)(e)).

Law stated - 19 May 2025

Costs

35 | Can a successful party recover its costs?

A Singapore-seated arbitral tribunal has wide and general discretion to allocate and apportion costs in its awards, unless the parties have agreed otherwise. The general rule, however, is that costs follow the event. This rule derives from court proceedings and means that the losing party will be ordered to bear the legal costs and arbitration costs incurred by the successful party, in full or in part. The paying party has the right to apply to the registrar of the SIAC for taxation (assessment) of the costs to be paid under an award, unless the award directs otherwise (IAA, section 21(1)). A tribunal need not take Singapore civil procedure principles on the allocation of costs into account (see *VV and another v VW* [2008] 2 SLR 929). The SIAC Rules 2025 provide that most forms of costs are recoverable, including the fees and expenses of the tribunal and the SIAC's administration, as well as legal and expert fees and expenses (SIAC Rules 2025, Rules 58). The tribunal may also take into account any third-party funding arrangements in apportioning the costs of the arbitration.

Under the IAA, the court also has the power to make an award or order of costs of the proceedings against any party, in making a ruling or decision that the arbitral tribunal has no jurisdiction (IAA, section 10(7)).

Law stated - 19 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Singapore is well positioned as a world-class alternative dispute resolution (ADR) hub. It offers a suite of both public and private dispute resolution institutions. Aside from arbitration, other types of ADR include mediation, negotiation, neutral evaluation (where a neutral third party reviews the case and provides an early assessment of the merits of the case) and lay adjudication. ADR is widely accessible in Singapore, and the most popular form of ADR is mediation. The State Courts' Court Dispute Resolution Cluster consolidates different ADR services for individuals who have pending matters in the State Courts under one umbrella. While ADR services under the State Courts generally remain free, a fee of S\$250 is payable by each party for district court cases (excluding non-injury motor accident, death or personal injury or protection from harassment claims).

In certain industries, adjudication is becoming very popular or even mandatory.

In the building and construction industry, the Building and Construction Industry Security of Payment Act 2004 provides for an adjudication process for payment disputes within the industry.

For the financial services industry, the Financial Industry Disputes Resolution Centre (FIDReC) has been set up as an affordable and accessible avenue for consumers to resolve their disputes with financial institutions. From 3 January 2017, the jurisdiction of FIDReC has been increased to up to S\$100,000 per claim between consumers and financial institutions. The decision of the adjudicator is final and binding upon the financial institution but not on the consumer.

In addition, the Singapore International Mediation Centre (SIMC) provides world-class mediation services targeted at mediating international commercial disputes with a panel of internationally respected mediators. SIMC offers an innovative process of 'Arb-Med-Arb' under the Arb-Med-Arb Protocol between the Singapore International Arbitration Centre (SIAC) and the SIMC, under which a dispute is referred to arbitration before mediation is attempted. If the parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award, which is generally accepted as an arbitral award, and, subject to any local legislation or requirements, is generally enforceable in approximately 150 countries under the New York Convention. If the parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings. Apart from SIMC, the Singapore International Mediation Institute (SIMI) works closely with both domestic and international mediation bodies and is partnered with the International Mediation Institute. SIMI promulgates qualification and credentialing

standards to contribute to the professionalisation of the mediation practice in the region. It aims to apply and enforce world-class standards of mediation, to provide impartial information about mediation and promote mediation education and awareness.

For domestic commercial disputes, the Singapore Mediation Centre (SMC) is a not-for-profit organisation that provides commercial mediation services. The SMC's panel of mediators mostly comprises domestic mediators. While most of the disputes that the SMC handles are construction disputes, the SMC also deals with banking, contractual, corporate, employment, information technology, insurance, partnership, shipping and tenancy disagreements.

The Law Society Mediation Scheme was officially launched on 10 March 2017 and its mediation services are available for all types of civil disputes without monetary limit on the value of a dispute. All parties must agree to the mediation, and legal representation is not required under the scheme. The rules are designed to make processes flexible and quick; for example, a mediation is deemed to conclude when no mediation settlement agreement is signed by the parties within 30 calendar days of commencement of the mediation.

To further promote mediation in Singapore, the Mediation Act 2017 (MA) was introduced in 2017. The MA applies to mediations conducted partly or wholly in Singapore, or where the mediation agreement provides that Singapore law applies. It aims to promote, encourage and facilitate the resolution of disputes by mediation, and includes, among other things, provisions aimed at making settlements more enforceable, by allowing parties who reach a settlement after mediation to agree to apply for the settlement to be recorded as a court order, which can be immediately enforced.

Also, on 7 August 2019, 52 states signed the United Nations Convention on International Settlement Agreements Resulting from Mediation in Singapore. Commonly known as the Singapore Convention on Mediation, this multilateral treaty provides a cross-border enforcement mechanism for international settlement agreements resulting from mediation, without the need for a party to first bring a contractual claim for breach of the agreement. Singapore and Fiji became the first two states to ratify the Singapore Convention on Mediation on 25 February 2020, followed by Qatar on 12 March 2020. Having been ratified by three states, the Singapore Convention on Mediation came into force on 12 September 2020.

Law stated - 19 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

The Rules of Court 2021 (ROC 2021) compels both the court and parties to take a more proactive approach towards considering ADR both before and during proceedings. Under the ROC 2021, a party must make an offer of amicable resolution before commencing an action in the Singapore courts unless the party has reasonable grounds not to do so. Similarly, the other party must not reject the offer made, unless it also has reasonable grounds to do so. Lawyers are obliged under the Legal Profession (Professional Conduct)

Rules 2015 to advise their clients to consider ADR and give their clients sufficient information about the different ways in which their disputes may be resolved using an appropriate form of ADR.

Once proceedings are commenced, parties are required to fill in a pre-case conference questionnaire (PCQ) stating whether amicable resolution has been attempted and if so, when, and the form of amicable resolution attempted by the parties. The PCQ is to be submitted before the first registrar's case conference. Any party who wishes to attempt mediation or any other means of amicable resolution during proceedings should file and serve on all parties an ADR offer. The party in receipt is to respond by filing and serving the response to ADR offer within 14 days of receipt. If a party refuses to go for ADR, the court has the power to order that the refusing party submit a sealed document setting out its reasons for refusing to attempt ADR. The court may take into consideration the ADR offer and the response thereto when making subsequent costs orders. Under the ROC 2021, the court also now has the power to order the parties to attempt to resolve the dispute by amicable resolution. The court may also suggest solutions for the amicable resolution of the dispute to the parties at any time as the court thinks fit.

For proceedings commenced in the State Courts, there is a 'presumption of ADR' in all civil claims to encourage ADR as the first choice in the resolution of disputes. The court's ADR process (involving mainly mediation and neutral evaluation) is compulsory in cases of non-injury motor accident, personal injury and medical negligence claims. For the category of magistrates' court cases to which the simplified procedure applies, the court may refer the case for ADR with the parties' consent or where the court is of the view that doing so would facilitate the resolution of the dispute between the parties. Cases that do not fall under such category will automatically be referred for ADR unless any or all of the parties choose to opt out of ADR. The court may take into account a party's refusal of ADR when making subsequent costs orders.

Law stated - 19 May 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Singapore is a world-class dispute resolution hub. It offers a complete suite of dispute resolution services, namely, litigation, arbitration and mediation, for both domestic and international disputes. The Singapore judicial system has been consistently rated as one of the most independent and efficient in the world, particularly for the resolution of civil disputes. The country's situation on one of the major trade routes of the world, zero tolerance for corruption, and long history of an open economy, have given its judiciary and institutions a highly international perspective.

Law stated - 19 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

A bilateral treaty signed between Singapore and Bahrain on 20 March 2024 marked a significant step in international judicial cooperation. This agreement laid the groundwork for the establishment of the Bahrain International Commercial Court (BICC) and, crucially, for a designated body in Singapore to hear appeals from it.

In advancement of the above treaty, the Singapore International Commercial Court (International Committee) Act 2024 (SICC (IC) Act) was passed by the Singapore Parliament on 12 November 2024 and assented to by the President of Singapore on 28 November 2024. The SICC (IC) Act, which has yet come into force, will establish an International Committee within the Singapore International Commercial Court (SICC (IC)), which will further enhance Singapore's standing as a leading global hub for dispute resolution.

The SICC (IC) will possess the unique authority to hear prescribed civil appeals from designated foreign jurisdictions. The first collaboration of the SICC (IC) will be based on the aforementioned treaty and the SICC (IC) will be able to hear appeals from the BICC. Cases in the SICC (IC) will be heard by a diverse composition of Singaporean judges, international judges that are part of the SICC and ad hoc members from the originating foreign court.

In September 2024, the Community Disputes Resolution (Amendment) Bill was passed to amend the current framework of the Community Disputes Resolution Tribunal (CDRT). Under the new framework, parties would have to undergo compulsory mediation and obtain a certificate of mediation or waiver of mediation before commencing an action with the CDRT. As part of facilitating the amicable and early resolution of disputes, the new framework has introduced the Community Relations Unit (CRU), empowering them to investigate and order individuals to stop making noise that disturbs their neighbours. The powers of the CRU include the installation of noise sensors to obtain data on the noise complained of. The establishment of the CRU took effect on 28 March 2025. However, the compulsory mediation scheme under the amendments will come into force at a later time, when notified in the Singapore Gazette.

In September 2024, the Supreme Court, the State Courts and the Family Justice Courts released guides on the use of generative artificial intelligence (gen AI) tools by court users. Based on the new guides, Singapore courts do not prevent the use of gen AI tools by court users, although this does not alter the court user's duty to comply with the law and all relevant rules, codes of conduct and practice directions. Any court user may be asked to inform the court, through an affidavit, whether gen AI was used in the production of any documents and to declare that all the documents are prepared in compliance with the guide. Failure to comply with the guide may result in, among other adverse consequences, costs orders made personally against the lawyer, the client or the litigant-in-person.



In March 2025, the Ministry of Law launched a public consultation paper on Singapore's international arbitration regime and the International Arbitration Act 1994. This consultation was launched to obtain the public's views on whether legislative amendments were necessary to ensure that Singapore remains attractive as an arbitration forum. Some of the issues raised in the review relate to setting aside applications in arbitration and other post-award scenarios.

Law stated - 19 May 2025

BraddellBrothers

1883

Angelia Thng
Edmund Jerome Kronenburg

angelia.thng@braddellbrothers.com
ej.kronenburg@braddellbrothers.com

Braddell Brothers LLP

Read more from this firm on Lexology

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LITIGATION

Court system

1 | What is the structure of the civil court system?

In general, Swiss civil proceedings comprise three judicial instances: the regional or district court (court of first instance), the cantonal high court (second instance, primarily competent for appeals), and the Swiss Federal Supreme Court (the final appellate instance at the federal level). In many cases, parties must first initiate a conciliation proceeding before a designated conciliation authority prior to filing a claim with the court of first instance.

Four Cantons – Zurich, St. Gallen, Berne, and Argovia – provide for specialised commercial courts with jurisdiction over commercial disputes (typically between legal entities) and corporate law matters. These commercial courts act as courts of first instance, and appeals against their decisions have to be brought directly before the Swiss Federal Supreme Court.

As of 1 January 2025, and where a commercial court is available, claimants can file their claim either with the competent conciliation authority or directly with the commercial court. If out-of-court settlement talks are not feasible, voluntary conciliation allows for a cost-effective attempt to discuss an amicable resolution of the dispute.

Many Cantons also have specialised courts of first instance for employment and tenancy matters. These courts are typically composed of mixed panels that include professional judges and representatives of the relevant industry or interest groups – such as tenants' or employers' associations. In labour disputes involving gender discrimination claims, gender parity in the composition of the panel is mandated.

Apart from these general principles, the organisation and composition of courts are governed largely by cantonal law rather than federal statute. Depending on the Canton and the nature of the case, court panels may consist of one, three or, in certain cases, five judges.

Law stated - 2 June 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Switzerland no longer uses juries in court proceedings, with the sole exception of criminal cases in the Canton of Ticino.

The judge leads the proceedings and decides on the merits. If the court consists of more than one judge, one judge will be designated to lead the proceedings. The other judges will remain in the background and only get actively involved for major procedural decisions, interim judgments, the main hearing and the deliberations for the final judgment. Court clerks also play a significant role in practice as they assist the judges and provide advice, although they do not have a formal vote in decisions.

In general commercial matters, Swiss judges do not assume an inquisitorial function. Instead, they question parties, witnesses and experts based on the factual allegations and evidence presented by the parties. There is no cross-examination by parties' counsel, but they can request the court to ask a party, witness or expert additional questions.

In contrast, in certain matters, the judge has an inquisitorial role and investigates the facts ex officio (eg, in child-related family matters).

Law stated - 2 June 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Swiss law distinguishes between two types of time limits in civil matters: limitation periods and forfeiture periods. Limitation periods are typically longer, can be suspended under certain conditions, and must be raised by a party to be considered by the court. Forfeiture periods, in contrast, are usually shorter, cannot be suspended and are applied ex officio by the court.

The applicable limitation period depends on the nature of the claim. As a general rule, civil claims are subject to a 10-year limitation period. Certain claims, such as those arising from bodily injury or death, are subject to a 20-year period. Others, including rental payments, are limited to five years, while tort and unjust enrichment claims must be brought within three years of the date the claimant became aware of the damage and the liable party.

Where a related criminal offence provides for a longer limitation period, that period may apply under specific circumstances.

In the context of warranty claims for the sale of movable goods, the limitation period is two years from delivery, even if the defect is discovered later – unless the seller has expressly agreed to a longer liability period or the buyer was intentionally deceived. If defective goods are incorporated into immovable property and cause damage, the limitation period is extended to five years.

Law stated - 2 June 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In general, Swiss civil procedure law does not recognize mandatory pre-action steps. Neither does Swiss civil procedure law provide for a general pretrial discovery (disclosure of documents or other evidence).

Document production requests can be based on procedural or, where applicable, substantive Swiss law. For example, the client can demand – based on Swiss substantive law – an account of the executed mandate from the principal. In such a case it may make sense to first file a claim only for documents/information before filing a main claim for

damages. However, both claims (document production and main claim) can also be filed together.

Document production based on procedural rules can in general only be sought during a pending civil procedure. In some cases, it may also be possible to have the court preserve evidence in a summary proceeding and ahead of the main proceeding (eg, if a witness is terminally ill or repair of a damaged item is required for safety reasons).

Other pre-action considerations include preventing witness tampering, securing evidence in general, taking precautionary measures (eg, asset freezing) and considering litigation financing.

Law stated - 2 June 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

In most cases, Swiss civil proceedings are commenced by filing a claim with the competent conciliation authority. The latter will then notify the defendant and summon both parties to a conciliation hearing. If no settlement is reached, the conciliation authority will issue the claimant the [authorisation to proceed](#) to the court. Claimant must generally file the claim with the court of first instance within three months of receiving the [authorisation to proceed](#). Upon receipt of the statement of claim, the court will send the statement of claim to the defendant and set a deadline for submitting a statement of defence. Consequently, the parties are served by the court and serving court documents or the statement of claim is not the parties' obligation (although in some Cantons, it is customary for lawyers to send a copy of their submission to opposing counsel).

Swiss courts generally have the capacity to manage their caseload. However, an increase in both the volume and complexity of cases in recent years – combined with challenges in judicial staffing – has contributed to longer proceedings in some jurisdictions.

As of 1 January 2025, the financial barrier to accessing justice has been lowered as courts may now require claimants to only advance 50 per cent of the estimated court costs, instead of the full amount, although exceptions apply. This aims to ease the financial burden on litigants while still ensuring basic cost coverage at the outset of proceedings.

Law stated - 2 June 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

An ordinary proceeding usually takes between 1.5 and 2.5 years from the filing of the claim with the conciliation authority until the judgment of first instance is handed down. If evidence

is gathered extensively — such as through multiple witness examinations or commissioned expert opinions — or if interim decisions are necessary, proceedings before the court of first instance may take significantly longer. Summary proceedings tend to take less time and urgent, ex parte interim measures can be sought within days.

The proceeding usually starts with a conciliation procedure, which typically lasts between three and five months, depending on the availability of the parties and the conciliation authority for the conciliation hearing. After the conciliation procedure, the claimant generally has three months to file the claim with the court of first instance. The first phase of the court trial generally consists of an exchange of briefs (statement of claim and statement of defence including any counterclaim). Depending on the court and the case, a second exchange of briefs and/or an intermediary hearing can be held. The latter can be used to hold settlement talks or to hear witnesses or both. After the second exchange of briefs, the parties will be summoned to the main hearing, which starts with the parties' pleadings. Thereafter, the court will hear the witnesses and take other evidence. The hearing can be adjourned as necessary.

At the end, the parties hold their final pleadings primarily focused on assessing the results of the taking of evidence and allocating these results to their allegations. After that, the court will start the deliberations on the judgment and draft the reasoning, which can take between a few weeks and several months. Since 1 January 2025, courts will generally issue an [unmotivated decision](#) and the parties have 10 days to request a motivation.

Law stated - 2 June 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties to court proceedings cannot apply for anti-suit injunctions in Switzerland as such orders are not known to the [Swiss Civil Procedure Code](#). In contrast, an arbitral tribunal with seat in Switzerland may do so upon a party's request.

If a claimant initiates proceedings before an incompetent court or conciliation authority, the defendant must protest by raising an objection. However, the conciliation authorities usually do not decide on their own jurisdiction, unless it is an obvious case. Should the conciliation fail and claimant receive the permission to sue, then defendant must repeat his or her objection before the court of first instance, which has the possibility to issue a decision regarding its jurisdiction. Such decision can be appealed.

If a claimant initiates proceedings before an incompetent conciliation authority or court, the defendant must raise a jurisdictional objection at the outset. Conciliation authorities generally do not assess their own jurisdiction, unless the lack of competence is manifest. If the conciliation fails and the claimant obtains authorisation to proceed, the defendant must reassert the jurisdictional objection before the court of first instance, which then has the authority to issue a decision on its own jurisdiction and the one of the conciliation authority. Such decisions are subject to appeal.

Parties may, in principle, agree on the territorial jurisdiction but not derogate from the material jurisdiction. This means that parties can choose a different place of jurisdiction (eg, by choosing Zurich over Geneva), but not determine which specific court within that location will have subject-matter jurisdiction (eg, a commercial versus a general district court).

Law stated - 2 June 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties have only limited control over the procedure and timetable, as the case management lies primarily with the court. However, they may request extensions of deadlines, submit replies to each other's submissions, or both with the effect of prolonging the proceedings. Conversely, in most proceedings, the parties may expedite the process by jointly waiving certain procedural steps, such as the main hearing.

As of 1 January 2025, the revised [Swiss Civil Procedure Code](#) allows for greater procedural flexibility through electronic means: with the mutual consent of the parties, courts may now conduct hearings, examine witnesses and take evidence via video conference or other electronic tools, which may streamline proceedings and reduce delays.

Law stated - 2 June 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In Swiss civil proceedings, parties are generally obliged to cooperate in the taking of evidence, but there is no general obligation to share all documents relevant to the case or other general pretrial discovery.

During proceedings, parties may file a request for document production with the court, seeking evidence held by the opposing party or third parties. The evidence sought must be precisely designated and relevant to the subject matter, as Swiss law does not permit fishing expeditions. The duty to produce documents can be limited, namely due to confidentiality obligations (eg, attorney–client privilege) or overriding interests (eg, protection of trade secrets).

There is no general rule explicitly requiring the preservation of documents during proceedings, except for obligations based on accounting and tax laws. However, the destruction of documents that could serve as evidence may influence the court's assessment, potentially leading to an inference that the destroyed evidence would have supported the opposing party's claims. Depending on the circumstances, document destruction could also constitute a criminal offence.

Law stated - 2 June 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The correspondence of a party or a third party with an attorney admitted to the bar in Switzerland is privileged.

As of 1 January 2025, the revised [Swiss Civil Procedure Code](#) introduced the right of in-house counsel to invoke privilege in civil proceedings. This in-house counsel privilege requires, inter alia, that the in-house legal department is led by a qualified lawyer and the document or information in question relates to an activity of the in-house counsel that is considered profession-specific for a lawyer (eg, providing legal advice).

This in-house counsel privilege also applies to third parties. A few additional privileges apply, for example, if disclosing information puts a close family member at risk of criminal prosecution.

Law stated - 2 June 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

The exchange of written evidence (eg, expert reports or documents) prior to trial is not mandatory, but may occur voluntarily, for example, to facilitate settlement discussions. Written witness statements and affidavits prepared in advance are not provided for under the [Swiss Civil Procedure Code](#), and their admissibility and evidentiary weight remain a matter of debate.

Witnesses are expected to testify directly before the court, and preparation by counsel is prohibited. Lawyers may only speak with witnesses under strict conditions and in very limited scenarios (eg, to understand a sequence of events essential for evaluating the chances of success in a lawsuit). With respect to private expert opinions and in light of the revised [Swiss Civil Procedure Code](#), which now generally recognizes such opinions as admissible documentary evidence, it must be born in mind that a court may subsequently decide to summon the expert for examination. Therefore, any contact with private experts should be undertaken with particular care so as not to compromise the evidentiary value of their opinion and/or testimony.

Swiss civil procedure law does not provide for general pretrial discovery (eg, disclosure of documents or other evidence). An exchange of written evidence prior to trial is uncommon, except in the context of settlement discussions.

Law stated - 2 June 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Parties and witnesses are generally questioned personally at the main hearing. If witnesses have been heard abroad (by request of the court), the minutes of the witness hearing will be taken into account. Experts provide their opinion primarily in written form. Upon request by the court, they must, however, testify in person. The court may also conduct an inspection on site (eg, on a property) to better understand the factual circumstances and to get a first-hand experience. Administrative authorities can provide written information, and the court may ask private entities (eg, a bank) to also provide written information in case a witness hearing is not necessary.

Before taking evidence, the court usually issues a written ruling on the evidence specifying the burden of proof, the admissible evidence and how it will be taken.

Since 1 January 2025, the revised [Swiss Civil Procedure Code \(CPC\)](#) allows for evidence to be taken via video conference or other electronic means, provided both parties consent. This includes the examination of witnesses and experts, and aims to enhance procedural efficiency, particularly in cross-border cases. Following the [revision of the CPC](#), private expert opinions are now generally regarded as admissible (documentary) evidence.

Law stated - 2 June 2025

Interim remedies

13 | What interim remedies are available?

In general, there is no limitation as to the content of an interim remedy. It can be any court order that is suitable for averting the impending disadvantage, for example:

- an asset freeze;
- a general prohibition to do something;
- an order to remedy an unlawful situation;
- an instruction to a registration authority or a third party;
- a benefit in kind; or
- where provided for by law, a cash payment.

As a general principle, it is, however, not allowed to anticipate the judgment with the interim measure sought, which is why provisional orders requiring performance (ie, duty to perform a cash payment or a service) are only possible under very restrictive conditions. In general, it is also possible to ask for interim relief if the main proceeding takes place outside of Switzerland. Search orders are a discovery tool and generally not part of Swiss civil procedures, but rather of criminal proceedings.

In cases of special urgency, courts can issue interim measures without prior hearing of the opposing party. However, they must promptly schedule a hearing or set a deadline for the opposing party to respond, ensuring a fair and balanced process.

Law stated - 2 June 2025

Remedies

14 | What substantive remedies are available?

The available remedy depends on the nature of the claim. Most claims are monetary, typically seeking payment of a specific amount. Interest may also be claimed if the debtor is in default. Swiss law does not provide for punitive damages.

Courts may also order non-monetary remedies, such as compelling a party to take specific actions (eg, repair a defective item, vacate a property or issue a statement), refrain from certain actions or tolerate acts by another party. Thus, judgments are not limited to monetary awards.

Law stated - 2 June 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

There are no general rules governing the settlement process, and parties are always at liberty to engage in private settlement discussions. According to professional conduct rules for attorneys, any settlement offer, negotiations or related confidential correspondence must remain confidential and can only be submitted to the court or other authorities with the explicit consent of the other party. This confidentiality requirement applies not only to communications between attorneys but also when only one party is represented by an attorney and the other party has explicitly agreed to the confidentiality.

Law stated - 2 June 2025

Enforcement

16 | What means of enforcement are available?

For monetary claims, the debt enforcement agency is responsible for the execution. It can seize the debtor's assets, sell them (typically through a public auction) and distribute the proceeds to the creditor. In cases involving non-monetary obligations, such as the obligation to do something, refrain from an action, or tolerate certain acts, the court may order substitute performance, impose criminal penalties for non-compliance or mandate a

penalty payment. Additionally, the court can also order physical actions such as the removal of movable property or the eviction of a tenant with the assistance of the police, if necessary.

Law stated - 2 June 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In general, court hearings and the announcement of oral judgments are public. The decision on whether the deliberations on the judgment are also public is governed by cantonal law. Public access can be restricted in whole or in part if required by public interest or the legitimate interests of those involved. Family law cases and conciliation proceedings in general are always confidential and not accessible to the public.

While courts are generally required to publish their judgments, these decisions are anonymised to protect the privacy rights of the parties involved. Third parties do not have the right to access court files, except under specific conditions, such as for academic research.

If the taking of evidence or the production of documents risks disclosing sensitive business information or otherwise jeopardises the legitimate interest of a party or third party, the court can take the necessary measures to protect these interests. This can apply not only to documents but also to hearings or portions of hearings. Furthermore, court settlement talks are private and off the record.

Further exceptions to the principle of public court proceedings and decisions may apply under specific conditions (eg, [special reasons](#)) in the context of arbitration and related state court proceedings (eg, in setting-aside or enforcement proceedings).

Law stated - 2 June 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

The court has the power to order costs. At the beginning of court proceedings, Swiss courts require the claimant to provide an advance on the estimated court costs. Until 1 January 2025, the advance generally covered the full amount of the estimated court costs. Since a revision of the [Swiss Civil Procedure Code \(CPC\)](#), effective as of 1 January 2025, the advance is principally limited to only half of the estimated court costs. This change aims to lower the financial barriers to accessing the courts, particularly for natural persons.

The amount in dispute is the main determinant of court costs, but the subject matter, complexity and duration of proceedings also influence the final costs. The allocation of

court costs is governed by federal law, whereas the actual tariffs are a matter of cantonal law. As a result, court costs can vary significantly between Cantons.

Another notable change in effect since the revision of the CPC concerns the allocation and recovery of court costs. Until the end of 2024, the court used the advance on costs to settle its fees, regardless of the outcome of the case. Under the revised law, the advance is now reimbursed if the party that paid it — usually the claimant — is not ultimately ordered to bear the court costs. As a result, the Canton now assumes the collection risk if the liable party fails to pay the court costs.

In cases where the claimant is, among other things, not domiciled or resident in Switzerland, appears insolvent, or has outstanding court costs from previous cases, the defendant can request the court to order the claimant to provide security for the party compensation potentially owed to the defendant. This obligation may be lifted by international treaties.

A party facing significant financial hardship can apply for state-funded legal aid, which covers court fees and legal representation and exempts the applicant from providing security. However, the conditions are very strict and the case must not be without prospect of success. Such request can be submitted either at the beginning of or during the proceedings. Except for very rare and exceptional cases, legal entities (eg, corporations) are not entitled to such financial aid.

Law stated - 2 June 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No win, no fee' agreements – where lawyers acting in court are paid only in the case of success are not permitted in Switzerland. Attorneys must remain professionally independent and evaluate each case objectively, which may suffer if the interests of the attorney are completely merged with the client's interest. However, limited success-based fees in addition to a base fee, which covers the attorney's costs and a reasonable profit margin, are possible, provided they do not compromise the attorney's independence.

Third-party litigation funding is permitted in Switzerland, particularly in commercial disputes. Funders may contractually take a share of any proceeds, but the attorney of the party must remain independent from the funder.

Law stated - 2 June 2025

Insurance

- 20** | Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance is available in Switzerland and is relatively common. Private individuals obtain coverage for legal costs arising from disputes in areas such as employment law, tenancy law and occasionally in cases involving personal liability. Additionally, legal expenses insurance is often part of broader directors and officers (D&O) liability insurance policies. Legal expenses insurance is also available for businesses and legal entities.

Law stated - 2 June 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under current Swiss law, collective redress is still limited. It is possible, under certain conditions, to coordinate claims by joining parties on either the claimant or defendant side, or by assigning claims to a single party who then pursues the claims collectively in one proceeding. However, the [Swiss Civil Procedure Code](#) is not designed for a large number of claimants and/or defendants and has no special civil procedure for collective redress.

Swiss civil procedure law does not provide for class actions so far (except for the action of an association, which is, however, used against violations of the personality of the association's members, not for monetary compensation).

In recent years, there have been initiatives to reform Swiss law by implementing new rules for collective redress. In March 2025, the National Council (one of the parliament's chambers) rejected a proposal by the Federal Council to implement collective redress instruments, including group actions and group settlement procedures. The rejection was based on concerns about the developments it may trigger, such as an increase in litigation.

Law stated - 2 June 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In general, parties can appeal judgments from the court of first instance to the cantonal high court and thereafter, as a last instance, to the Swiss Federal Supreme Court, provided the legal requirements are met.

Appeals may be based on the argument that the lower court applied the law incorrectly and/or misapprehended the presented facts. The scope of admissible complaints typically narrows as the case progresses to higher courts. Notably, the Swiss Federal Supreme Court primarily reviews legal issues and generally does not re-evaluate facts unless exceptionally justified.

The depth of judicial review depends on the type of appeal and the specific procedure applicable. In addition to ordinary appeal mechanisms, a party may request revision of

a judgment in extraordinary cases, for example, if the proceedings were influenced by a crime.

Law stated - 2 June 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The most important legal instrument governing the recognition and enforcement of foreign judgments in Switzerland remains the Lugano Convention between Switzerland, the European Union, Denmark, Iceland, and Norway (Lugano-States). Judgments issued in these states are subject to relatively liberal recognition requirements under the Convention. Swiss courts may not re-examine the foreign judgment on the merits (*norévision au fond*), except in narrowly defined exceptional cases.

For judgments originating in non-Lugano states, recognition and enforcement are governed by the Swiss Federal Act on Private International Law ([PILA](#)), subject to applicable treaties. Under the PILA, the Swiss courts assess whether minimum conditions – such as jurisdiction, proper service, compatibility with Swiss public policy (*ordre public*) and *res judicata* – are fulfilled.

Recognition and enforcement typically occur incidentally within the course of enforcement proceedings, unless a separate declaratory procedure is initiated.

Law stated - 2 June 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Switzerland is a party to the [Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters](#). This Convention facilitates international cooperation in gathering evidence for civil or commercial proceedings.

Under this Convention, Swiss authorities can assist foreign courts by obtaining oral testimony or documentary evidence. Similarly, Swiss courts can request assistance from foreign authorities to collect evidence for use in Swiss proceedings. These requests are typically made through letters of request (rogatory letters), which are transmitted via the designated central authorities.

In Switzerland, the Federal Office of Justice (FOJ) serves as the federal central authority for international legal assistance. The cantonal authorities act as cantonal central authorities, handling requests within their respective jurisdictions. The FOJ coordinates with these cantonal authorities to process and execute incoming and outgoing requests for evidence gathering and service of documents.

Law stated - 2 June 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Swiss arbitration law is influenced by the UNCITRAL Model Law on International Commercial Arbitration, particularly regarding international arbitration. However, the [Swiss Federal Act on Private International Law](#) applicable to *international arbitration* offers more flexibility, making it user-friendly and efficient.

Switzerland has its own set of rules for *domestic arbitration* stipulated in the [Swiss Civil Procedure Code](#), which are distinct but similarly flexible and liberal.

In both cases, Swiss law emphasises party autonomy, arbitral independence and procedural efficiency.

Law stated - 2 June 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing or in any form that allows proof by text. The parties' signatures are not required. Arbitration agreements made via email are formally valid as long as the text can be reproduced. This criterion of physical reproducibility of the agreement is met if the agreement can be printed or stored in a permanent format (eg, PDF, document, etc).

Law stated - 2 June 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Unless the parties have agreed otherwise, the arbitral tribunal (in domestic or international arbitration) will consist of three arbitrators. Each party appoints one arbitrator, and the arbitrators must unanimously elect a president.

A party may challenge an arbitrator whom it has appointed, or in whose appointment it participated, only for reasons it became aware of after the appointment and despite having exercised due diligence prior to the appointment.

Law stated - 2 June 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

In most cases, arbitration institutions provide lists of qualified arbitrators that the parties can choose from. In Switzerland, the Swiss Arbitration Association offers a network of arbitration experts with experience across various sectors.

Given the high degree of professionalisation in the Swiss arbitration market, suitable arbitrators with the appropriate legal and industry expertise are typically readily available. The parties have a wide range of options, ensuring that the selected arbitrator is suitable for the specific case at hand.

Law stated - 2 June 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties may either draft their own procedural rules or refer to an existing set of arbitration rules. They may also designate a procedural law of their choice. If the parties have not determined the procedure, the arbitral tribunal shall establish it to the extent necessary — either directly or by reference to a chosen law or a set of institutional arbitration rules (eg, Swiss Rules of the Swiss Arbitration Centre).

Swiss arbitration law (*lex arbitri*) – whether governed by the [Swiss Federal Act on Private International Law \(PILA\)](#) for international arbitration cases or by the [Swiss Civil Procedure Code \(CPC\)](#) for domestic arbitration cases – provides considerable procedural flexibility. Both frameworks ensure fundamental procedural safeguards such as equal treatment of the parties and the right to be heard. Nonetheless, certain differences exist; for instance, under the CPC, the parties' ability to waive recourse against the arbitral award is more limited than under the PILA.

Law stated - 2 June 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Swiss courts have several powers to assist the arbitral process. They can intervene if, for example, a party refuses to comply with an interim measure ordered by the arbitral tribunal. The court may also be called upon to appoint or remove arbitrators if the parties are unable to agree, or if an arbitrator must be removed for valid reasons. Additionally, Swiss courts can

assist with the taking of evidence, such as compelling a witness to appear, when requested by the arbitral tribunal or a party.

Law stated - 2 June 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties, the arbitral tribunal can grant preliminary or protective measures at the request of one of the parties. If the concerned party does not voluntarily comply, the arbitral tribunal or the requesting party may seek the assistance of the state court to enforce the measure.

Law stated - 2 June 2025

Award

32 | When and in what form must the award be delivered?

In international arbitration, the award must follow the procedure and form agreed upon by the parties. If no such agreement exists, the decision will be made by majority vote or, if there is no majority, by the chairperson. The award must be written, dated, signed, and state the reasons. In domestic arbitration, the rules are more detailed, including specific procedural requirements for the award's delivery.

Law stated - 2 June 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

In general, international arbitration awards are final. The Swiss Federal Supreme Court reviews international arbitration awards, but it does so based on a narrow scope, which includes:

- improper composition of the arbitral tribunal;
- incorrect decision on the tribunal's competence;
- issues beyond the tribunal's mandate or failure to rule on submitted issues;
- violation of equal treatment or the right to be heard; and
- incompatibility with public policy.

Additionally, parties can request revision of an award (also with the Swiss Federal Supreme Court), but this is granted only in exceptional cases and for very limited reasons.

If none of the parties has its domicile, habitual residence, or registered office in Switzerland, they may agree to exclude appeals to the Swiss Federal Supreme Court in the arbitration agreement or in a subsequent agreement. The right to request a revision of an international arbitration award, if it was influenced by a crime, cannot be waived.

In domestic arbitration, the parties may agree that the arbitral award is subject to appeal before the competent cantonal court, whose decision will be final – instead of the Swiss Federal Supreme Court, which would generally be competent for appeals. Unlike in international arbitration, however, the parties cannot waive this right to appeal in advance.

Law stated - 2 June 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The proceeding for the enforcement of foreign arbitration awards in Switzerland is the same as for foreign state court judgments. Recognition and enforcement are typically sought incidentally during the enforcement proceeding. The [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) governs this process, as Switzerland is a signatory. A large number of jurisdictions have acceded to the New York Convention, which currently counts 172 Contracting States, including the vast majority of UN member states.

For domestic arbitral awards, enforcement follows the same procedure as for state court judgments.

Law stated - 2 June 2025

Costs

35 | Can a successful party recover its costs?

Costs are primarily governed by the procedural law the parties choose. These costs typically include:

- costs of the arbitral tribunal (arbitrators' fees and expenses, expert costs, infrastructure costs, etc); and
- party costs (legal fees, expenses, expert costs, travel and accommodation expenses, etc).

The arbitral tribunal decides on the amount and distribution of the costs of the arbitral tribunal and the compensation of the parties' costs in the award, or in a separate award related to costs. Subject to the applicable rules, the arbitral tribunal may order a party to provide security for the compensation of the other party's costs.

Law stated - 2 June 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

The distinctive feature of Swiss civil procedural law is (mandatory) conciliation: The [Swiss Civil Procedure Code \(CPC\)](#) usually requires parties to first submit their dispute to a conciliation authority. Only if this attempt fails may the claimant bring the matter before the court. Additionally, courts frequently conduct off-the-record settlement discussions, offering a preliminary assessment to encourage early resolution. This approach results in a substantial number of disputes being settled without proceeding to a full trial. Under the revised CPC, voluntary conciliation is also available, particularly in cases under the jurisdiction of commercial courts, where conciliation is not mandatory, providing an additional attempt to resolve the dispute amicably. Additionally, voluntary mediation is also available, particularly in family and estate law matters.

Law stated - 2 June 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Apart from the mandatory conciliation prior to most civil proceedings, the court cannot compel parties to engage in ADR during a pending court procedure. However, the court can recommend mediation to the parties. Furthermore, the parties may choose to jointly request mediation as an alternative to the conciliation procedure, or at any point during an ongoing case. Depending on the application and the status of the proceedings, mediation can replace the conciliation attempt or, if the court proceedings have already started, may result in a suspension of the proceedings for the duration of the mediation.

Law stated - 2 June 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Switzerland's unified [Swiss Civil Procedure Code \(CPC\)](#), effective since 2011, harmonised the different civil procedure codes previously existing in each Canton. Despite this unification, regional practices and habits persist, leading to regional interpretations of the CPC, inconsistencies, and other differences in court procedures. These differences will continue to decrease over time.

Switzerland's four official languages – German, French, Italian, and Romansh – dictate the language of court proceedings based on the region. As of 1 January 2025, with the CPC revision, Cantons can provide for proceedings in English in international commercial disputes as well as for certain procedures before state courts in connection with international arbitration. In these procedures, the parties can also file briefs in English with the Swiss Federal Supreme Court, but the decisions of the Swiss Federal Supreme Court will be handed down in one of the official languages.

In some (more rural) Swiss courts of first instance, lay judges who do not have formal legal education serve on the bench, with assistance from legally trained court clerks.

Law stated - 2 June 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The Swiss parliament approved significant amendments to the [Swiss Civil Procedure Code \(CPC\)](#), which took effect on 1 January 2025. Key changes include the following:

- Establishment of [International Commercial Courts](#): since the revision of the Swiss Civil Procedure Code (CPC), Cantons can designate commercial courts to handle certain international commercial disputes. This allows specialised courts or chambers to hear international cases, enhancing Switzerland's role as a centre for international litigation. Parties may prorogue jurisdiction to these courts if specific conditions are met, such as a foreign party's involvement and a minimum dispute value of 100'000 Swiss francs. Bern has already made plans, and Zurich intends to open its Zurich International Commercial Court for such disputes in 2027.
- Proceedings in English: Parties may agree to use English as the procedural language in these specialised international commercial courts under the revised CPC, including for appeals to the Swiss Federal Supreme Court. This option applies notably in disputes involving foreign parties and increases Switzerland's appeal as a forum for international commercial litigation in English.
- Reduction of the advance on costs: courts may now require an advance payment of no more than 50 per cent of the estimated court costs (with certain exceptions). This measure aims to lower financial barriers and improve access to justice.
- Legal privilege for [in-house counsel](#): under specific conditions, in-house lawyers may invoke privilege and refuse cooperation in the taking of evidence, aligning Switzerland more closely with international privilege standards.

- Recognition of private expert opinions: under the revised CPC, expert opinions commissioned by a party are now formally classified as [documentary evidence](#). While this marks a departure from the previous practice – where such opinions were typically regarded as mere party assertions – their probative value remains subject to judicial discretion in each individual case. While it is generally expected that the relevance of such party-appointed expert opinions will increase, the court may, upon a party's request, still commission a court-appointed expert opinion or deviate from the party-appointed expert opinion based on other evidence.
- Use of [electronic means](#) in civil proceedings: courts may now conduct hearings and gather evidence via video or telephone conferencing, subject to the consent of the parties and compliance with procedural safeguards under the new Ordinance on the Use of Electronic Means in Civil Proceedings.
- Expansion of the [scope of conciliation proceedings](#): conciliation authorities can now propose decisions in disputes with a value of up to 10'000 Swiss francs (previously 5'000 Swiss francs), and voluntary conciliation has been introduced in civil proceedings with only one court instance on the cantonal level, namely the commercial courts.
- Procedural access to justice: new rules enhance, inter alia, access to financial aid, allow direct payment of party compensation to lawyers, and allocate the collection risk for court costs to the Cantons.

Additionally, Switzerland's accession to the [Hague Convention on Choice of Court Agreements \(2005\)](#) took effect on 1 January 2025, improving legal certainty in international commercial disputes and facilitating cross-border enforcement of judgments. This may be particularly relevant for the recognition and enforcement of judgments from the United Kingdom post-Brexit, as the Lugano Convention no longer applies to many such judgments.

In March 2025, proposals to expand collective redress mechanisms were rejected by the National Council (one of the parliament chambers) due to concerns about potential misuse (and consequent increase in litigation) and with reference to the sufficiency of existing legal instruments.

Law stated - 2 June 2025

The logo for valfor, featuring the word "valfor" in a bold, lowercase, sans-serif font. The letters are white, and the background is a dark teal square.

Cyrill Süess
Bilel Amri

cyrill.sueess@valfor.ch
bilel.amri@valfor.ch

Valfor Attorneys-at-law

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The structure of the civil court system depends on the type of proceedings initiated in each case. In regular proceedings, the system comprises three levels: the district court, the appellate court, and the Supreme Court. The district and appellate courts serve as courts of fact, while the Supreme Court functions as a court of law, reviewing only legal interpretations. However, cases involving a monetary value not exceeding NT\$1.5 million are not eligible for appeal to the Supreme Court. For certain cases subject to specific conditions, summary proceedings and small claims proceedings apply, which, in principle, are confined to the district court and limited to two instances.

Law stated - 13 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The jury mechanism does not apply. The Taiwanese civil litigation system is adversarial in nature, with each party responsible for determining the content and presentation of their case. The primary role of the judge is to oversee the proceedings, apply the relevant laws, examine the evidence, and deliver a judgment.

Law stated - 13 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The statute of limitations varies depending on the nature of the case. In general, the limitation period is 15 years. However, certain legal provisions prescribe shorter limitation periods, which may be one, two, five or ten years, depending on the circumstances.

Law stated - 13 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In most circumstances, there are no mandatory pre-action requirements prior to initiating civil proceedings. Although not prescribed by law, parties may occasionally issue a legal attestation letter as a formal notice or as evidence of intent.

Law stated - 13 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings commence upon the plaintiff's submission of a complaint, payment of court fees and the scheduling of court hearings after the court assigns a presiding judge to the case.

It typically takes around two to four weeks for the court notice and a copy of the complaint to be served on the defendant by post. If the plaintiff receives a court notice requesting additional evidence or scheduling a hearing, the status of the proceedings can then be ascertained.

Despite the heavy workload, judges continue to endeavour to deliver high-quality judgments. The Taiwanese judicial system is actively promoting alternative dispute resolution and the digitalisation of case files as alternative means of alleviating the burden on the courts.

Generally, court fees for the first instance are set at approximately 1.1–1.5 per cent of the claimed amount, and around 1.5–2 per cent for appellate proceedings. The higher the value of the subject matter of the litigation, the higher the court fees will be. However, where the matter concerns non-proprietary rights, a fixed court fee of NT\$4,500 applies at first instance, and NT\$6,750 for appellate proceedings. Other conditions are set out in detail in the Taiwanese Code of Civil Procedure.

Law stated - 13 May 2025

Timetable

- 6 | What is the typical procedure and timetable for a civil claim?

Typically, the plaintiff initiates proceedings by filing a complaint and paying the requisite court fees. Once the court accepts the case, both parties are required to submit their pleadings and proceed with oral arguments. 'Key Points for the Implementation of Case Handling Time Limits at All Levels of Courts' may be taken as a reference for the court's timelines for concluding civil cases. Cases are generally expected to be resolved within two years at the district court level, within two years and six months at the appellate court level, and within one year and six months before the Supreme Court. However, these timelines are not mandatory, and the actual timeline will be subject to the court's discretion. For certain types of cases, compulsory mediation – typically lasting between two and six months – is required before the matter can proceed to trial.

Law stated - 13 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Yes. Unless jurisdiction by consent or other exceptions applies, a court lacking jurisdiction will transfer the case to the appropriate court, either upon the plaintiff's petition or on its own initiative.

In Taiwan, anti-suit orders are not available; however, jurisdiction is a matter that can be contested and must be determined during the course of the trial.

Law stated - 13 May 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The judicial process in Taiwan follows the inquisitorial principle, whereby courts actively direct the proceedings. The parties may propose time frames for submitting briefs and scheduling hearings, as well as suggest which issues should be addressed first in the proceedings. However, in practice, the procedure and timeline are primarily determined by the court.

Time limits for bringing civil claims are not subject to extension. Unlike statutory peremptory periods, which may only be extended in extremely rare cases – such as force majeure – the timelines set by the presiding judge may be extended with the judge's approval.

Law stated - 13 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

No. There is no discovery mechanism in the Taiwanese judicial system. Parties should produce documents in support of their arguments.

While there is no obligation to disclose documents, a party's refusal to comply with a court order for the production of evidence may permit the court, at its discretion, to deem the opposing party's allegation concerning the evidence, or the fact intended to be proved thereby, to be true.

Law stated - 13 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The discovery mechanism does not apply in Taiwan. The parties may determine which documents to produce during the proceedings. When submitting materials that involve the privacy or commercial secrets of a party or a third party, the producing party is entitled to request a protective order or to apply for restrictions on the access, copying or photographing of such documents. Any related hearings may be conducted in private session.

The right to confidential communication between clients and lawyers ought to be protected, as emphasised in Taiwan Constitutional Court Judgment 112-Hsien-Pan-9 of 2023, in which Lee and Li, Attorneys-at-Law, acted as the petitioner. This landmark case in Taiwan safeguards the rights of clients and attorneys and is anticipated to inspire other Asian countries with civil law systems. However, whether this attorney-client privilege, grounded in constitutional law and established within the context of criminal proceedings, is equally applicable to civil proceedings warrants further examination.

Law stated - 13 May 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

No.

Law stated - 13 May 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

It is common for evidence – such as witnesses, documents and objects – to be presented in briefs alongside written statements. Evidence may also be presented orally during hearings. Witnesses, experts and expert witnesses may provide both oral and written evidence.

Law stated - 13 May 2025

Interim remedies

- 13** | What interim remedies are available?

In Taiwan, three types of precautionary proceedings are available for civil remedy: provisional attachment for monetary claims, provisional injunction for non-monetary claims and an injunction to maintain the temporary status quo of the legal relationship in dispute.

Law stated - 13 May 2025

Remedies

14 | What substantive remedies are available?

There are provisions for compensation in respect of damages, the performance or non-performance of specific acts, as well as appropriate measures for the restoration of reputation. Certain legal provisions also govern punitive damages, which may amount to several times the value of the actual damages.

Law stated - 13 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Court proceedings may involve either compulsory or voluntary mediation. Where compulsory mediation applies, the parties may proceed to trial only if the mediation proves unsuccessful. The court may encourage settlement or mediation at any stage during the proceedings.

A settlement or mediation agreement may be reached either before the court or privately between the parties. If such an agreement is entered into before the court, the trial transcript will become part of the court record. Conversely, if the parties choose to negotiate a settlement privately and execute the agreement with mutual consent to confidentiality, the agreement may remain confidential and not be disclosed to the court.

Law stated - 13 May 2025

Enforcement

16 | What means of enforcement are available?

Enforcement methods vary according to the nature of the debtor's assets. These may include attachment, auction, seizure and other similar measures. The court may employ both direct and indirect means of compulsion to ensure the performance or non-performance of specific acts, as well as to implement appropriate measures for the restoration of reputation.

Law stated - 13 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Yes. Hearings are generally held in public.

Only the rulings or judgments are made public. Other documents submitted during the proceedings – such as briefs, evidence or statements – will not be disclosed unless their content is referenced in the rulings or judgments.

Hearings may be held in private session upon petition or at the court's discretion, particularly in cases involving matters of privacy or commercial secrets.

Evidence preservation proceedings may be employed to safeguard documents and other evidence outside of the trial. However, the court adopts a conservative stance in granting such preservation. A petition for preservation will be considered under three circumstances: (1) there is a likelihood that the evidence may be destroyed or that its use in court may become difficult; (2) the opposing party consents to the preservation of the documents or evidence; and (3) the petitioner has a legal interest in ascertaining the status quo of a matter, and there is a necessity to proceed with the preservation process.

Law stated - 13 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Yes. The court will order that litigation costs (mainly the court fees) be borne by the losing party.

Law stated - 13 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

If the likelihood of success is uncertain or the value of the claim is difficult to determine, the plaintiff may choose to file the suit with a modest claimed amount, while reserving the right to increase the value once the facts become clearer.

The law does not prohibit a third party from funding a case or receiving a share of the proceeds from a claim. However, an attorney may only accept fees paid by such a third party with the consent of their client and under the condition that the attorney maintains confidentiality obligations to the client. Such funding must not compromise the attorney's professional judgment in handling the case.

There is no special regulation for risk-sharing in Taiwan.

Law stated - 13 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Yes. In practice, third-party liability insurance may cover a portion of attorneys' fees.

Law stated - 13 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Yes. The litigants with similar claims can file a class action as co-plaintiffs, and appoint a party to conduct most of the acts of litigation. Class action lawsuits commonly arise in cases involving consumer incidents, public nuisance events, personal data cases and securities or futures trading matters, particularly where there is a large number of victims.

Law stated - 13 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

For civil suit, if the parties subject to the judgment are dissatisfied with the decision, they may lodge an appeal within twenty days. At the appellate court level, the parties are not permitted to introduce new grounds of attack or defence. Appeals to the Supreme Court are limited to matters concerning non-proprietary rights, or proprietary rights with a value exceeding NT\$1.5 million, and must be based on errors in law or breaches of applicable regulations identified in the original judgment.

Law stated - 13 May 2025

Foreign judgments

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23 | What procedures exist for recognition and enforcement of foreign judgments?

A final and binding judgment rendered by a foreign court shall be recognised by our courts, except in certain specific statutory circumstances – such as where the foreign court lacked jurisdiction under Taiwanese law.

Law stated - 13 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Not applicable.

Law stated - 13 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Theoretically, the spirit of the UNCITRAL Model Law underpins the Arbitration Law of the Republic of China (ROC). The ROC Arbitration Law is primarily influenced by the UNCITRAL Model Law and also draws on the legislation of other jurisdictions. In addition, it contains provisions that are not included in the UNCITRAL Model Law.

Law stated - 13 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing. The arbitration agreement must relate to a defined legal relationship, and the dispute must involve a matter that may be settled under Taiwanese law.

Law stated - 13 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Where an arbitration agreement specifies the appointment of an arbitrator or a method for such appointment, the parties shall follow the agreed procedure. In the absence of such an agreement, each party shall appoint one arbitrator, and the two appointed arbitrators shall jointly designate a third arbitrator to act as chair. The arbitral tribunal shall notify the parties in writing of the final appointment. If the arbitrators fail to agree on the chair within 30 days, the appointment shall be made by a court or arbitral institution upon the petition of either party.

In principle, the appointment of arbitrators, whether by an arbitration institution or by the court, shall not be challenged by the parties. However, the parties are permitted to raise grounds for disqualification or indicate certain reasons for refusal.

Law stated - 13 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

To act as an arbitrator, a person must satisfy both positive and negative criteria. With regard to the former, the individual should possess legal or other relevant professional knowledge or experience, as well as a reputation for integrity and impartiality. The latter criteria stipulate that the person must not have been convicted of any criminal offence that has been upheld, such as corruption or malfeasance.

Law stated - 13 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Yes. In principle, the parties may reach any consensus regarding the arbitration procedure within the arbitration agreement. In the absence of an agreement governing the procedure, the arbitral tribunal shall apply the ROC Arbitration Law. Where the Taiwan Arbitration Law is silent, the arbitral tribunal may, *mutatis mutandis*, adopt the Taiwanese Code of Civil Procedure or such other procedural rules as it deems appropriate.

Law stated - 13 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

The court may appoint arbitrators upon petition or at its discretion under specific circumstances. The arbitral tribunal may also request assistance from the court or other

authorities when necessary to conduct arbitration proceedings. Further, the arbitral tribunal may summon witnesses to appear for examination. Should a witness fail to attend without sufficient cause, the arbitral tribunal may petition the court to compel their attendance.

Law stated - 13 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

No. The power to grant interim relief is vested solely in the court.

Law stated - 13 May 2025

Award

32 | When and in what form must the award be delivered?

To the extent that a decision on the dispute can be satisfactorily reached, the arbitral tribunal shall declare the hearing concluded and, within 10 days thereafter, issue an arbitral award containing the names and residences or domiciles of the relevant parties, the main text and other pertinent details. Upon issuing the award, the arbitral tribunal shall deliver a certified copy of the arbitral award to each party.

Law stated - 13 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

There are circumstances in which a party may apply to a court to set aside an arbitral award, but all related to exceptional and serious procedural grounds, such as when the arbitration agreement is null and void. Such a challenge may be appealed to the appellate court and subsequently to the Supreme Court, until the decision becomes final and irrevocable.

Law stated - 13 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

To obtain recognition of a foreign arbitral award, the party should file a petition with the court, accompanied by the original arbitral award, the original arbitration agreement

and other relevant documents. Both foreign arbitral awards recognised by the court and domestic awards not set aside are binding on the parties and carry the same force as a final judgment of the court. An award is enforceable by an order of the competent court.

Law stated - 13 May 2025

Costs

35 | Can a successful party recover its costs?

Where the parties have reached an agreement to recover the winning party's costs, including both arbitration expenses and legal fees, the prevailing party shall be compensated accordingly.

Law stated - 13 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation and settlement are the most commonly used ADR processes in Taiwan, as they are quite convenient and help reduce the number of cases reviewed by the courts, thereby saving judicial resources and lowering costs for the parties involved. Certain types of cases are further subject to compulsory mediation before formal trial proceedings commence.

Setting aside settlements that can be reached privately or before the court, mediation is the most popular ADR process in Taiwan. Our courts promote these ADR systems due to their convenience and cost-efficiency. ADR involves professionals from various fields acting as mediators. Further, a mediation committee is established in every township, town or city. Therefore, mediation is the most prevalent ADR process, aside from settlement.

Law stated - 13 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In general, the court cannot compel the parties to participate in an ADR process. The parties may decide whether to undergo mediation or settlement negotiations. However, certain types of cases require compulsory mediation before proceeding to litigation, such as labour disputes and family cases.

Law stated - 13 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In recent years, due to the transformation of industrial structures and robust economic growth, the complexity of commercial disputes has increased. Considering the characteristics of commercial cases as 'highly specialized and requiring swift, consistent, and predictable judgments', Taiwan established a Commercial Court, which was later integrated into the original Intellectual Property Court and reorganised as the Intellectual Property and Commercial Court (IPC). Commercial cases meeting specific criteria, such as those with a claimed value equal to or exceeding NT\$0.1 billion, fall exclusively under the jurisdiction of the IPC. Further, commercial cases subject to the IPC's jurisdiction must be mandatorily represented by attorneys.

Law stated - 13 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

At the end of 2023, paragraph 3 of article 83 of the Taiwanese Code of Civil Procedure was promulgated, stipulating a broader scope for the refund of proportional court fees (two-thirds) if the plaintiff voluntarily withdraws the case before the conclusion of the oral argument session in the appeal trial or before the Supreme Court delivers its judgment. Prior to 2023, however, court fees could only be refunded to the plaintiff if the case was withdrawn at first instance. In the event of an appeal, it was the appellant who was entitled to a refund of the appeal court fees upon withdrawing the appeal. Nevertheless, when the plaintiff withdrew the case at the appeal stage, appellants received no refunds. In order to encourage parties to withdraw unmeritorious or unnecessary lawsuits, reduce the burden on the courts and conserve judicial resources, the revised Code of Civil Procedure came into effect in late November 2023, empowering appellants to claim a refund of proportional court fees in relevant appeal cases even if the case is withdrawn by the plaintiff.

Law stated - 13 May 2025



Selena Chen
Jeffrey Li

selenahychen@leeandli.com
jeffreyli@leeandli.com

Lee and Li Attorneys at Law

[Read more from this firm on Lexology](#)

Thailand

Pisut Rakwong, Supachoke Pongdasakorngamjai

Pisut & Partners

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Court of Justice is divided into three levels: the court of first instance, the appeal court and the Supreme Court.

Courts of first instance comprise district courts and provincial courts. District courts have jurisdiction to hear small claims with value below 300,000 baht, while provincial courts have jurisdiction over claims exceeding 300,000 baht, non-monetary cases, non-contentious cases, and all other civil claims that are not subject to the jurisdiction of other civil courts. Across the country, there are several district courts and provincial courts with specific jurisdiction to hear cases in particular locations as provided by the law. However, in some provinces, there is no district court. In such cases, the plaintiff can bring a case that falls under the jurisdiction of the district court to the provincial court in that province. At least two judges would constitute a quorum for the purposes of hearing and determining any matter in the provincial courts, whereas only one judge is required for district courts.

In addition to the above, there are five specialised courts in Thailand: the intellectual property and international trade court, the tax court, the labour court, the bankruptcy court, and the juvenile and family court. Quorum and types of judges for the purposes of determining any matter in the specialised courts are specified under the specific legislation regarding the disputed matter.

The appeal courts in Thailand comprise the Court of Appeal, Regional Courts of Appeal situated in nine regions across the country and the Court of Appeal for Specialised Cases. Courts of Appeal and Regional Courts of Appeal handle appeals against the judgments or orders of the court of first instance, except the specialised courts. An appeal against the judgments or orders of the specialised courts must be made to the Court of Appeal for Specialised Cases or directly to the Supreme Court, as the case may be. A panel in the appeal court is formed by at least three judges.

The Supreme Court is the highest court in Thailand. There is only one Supreme Court in Thailand, which is located in Bangkok. The Supreme Court has the power to hear cases that are appealed on judgments or orders rendered by the appeal courts and cases that are under the jurisdiction of the Supreme Court as prescribed by the special laws. Appeal to the Supreme Court is not an automatic right. The parties must request permission to appeal from the Supreme Court, and permission will only be granted if the appeal is a significant matter worthy of consideration. The ordinary quorum in the Supreme Court consists of three justices of the Supreme Court. However, in special cases involving important factual or legal issues, if the President of the Supreme Court deems it appropriate, they have the authority to bring such cases to be adjudicated by the plenary session of the Supreme Court.

Law stated - 30 April 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

There is no jury system in Thailand. The accusatorial system applies to most civil cases, except in certain specialised courts and specific case types. Judges must decide the case based on the evidence presented by the parties, and they are not empowered to request additional facts and evidence on their own initiative.

Law stated - 30 April 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The statutory time limits or periods of prescription for bringing civil claims vary significantly depending on the nature of the claims as prescribed by laws. The time limit for claims for which no specific period is prescribed by law is 10 years. A claim for a wrongful act is barred one year after the day that the wrongful act and the person bound to make compensation became known to the injured person, or 10 years from the day of commission of the wrongful act. However, if the damages are claimed on account of an act punishable under the criminal law for which a longer time limit is provided, that longer time limit will apply.

The statutory time limit cannot be extended, reduced or suspended by mutual agreement between the parties. Nevertheless, the time limit may be interrupted if the debtor has acknowledged the debt towards the creditor by written acknowledgement, making partial payment or payment of interest, giving securities, or undertaking any act implying the acknowledgement of debt. In this case, the time limit begins to run when the interruption ceases.

The statutory time limit in civil claims is not a matter of public policy. As such, if the defendant does not raise this matter in an answer, the court would not have authority to dismiss the claim on grounds of the expiration of time limits.

Law stated - 30 April 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Typically, a plaintiff will send a demand letter to the defendant before initiating civil proceedings. However, specific pre-action requirements exist for certain claims as outlined in the Civil and Commercial Code.

For instance, in cases involving the enforcement of a mortgage, a claim can only be filed after the notice period has elapsed. The mortgagee must provide written notice to the debtor, allowing a reasonable time of at least 60 days for the performance of obligations. Additionally, if the mortgagor pledges their property as security for another person's obligation, the mortgagee must notify the mortgagor within 15 days of serving

the written notice to the debtor. Failure to do so releases the mortgagor from liability for interest, compensation and associated charges starting from the expiration of the 15-day period.

Regarding claims against guarantors, a claim can be filed once the written notice reaches the guarantor. If the creditor fails to serve written notice to the guarantor within 60 days from the debtor's default, the guarantor is released from liability for interest, compensation, and charges arising after the 60-day period.

For lease contracts, termination can occur at the end of each rent period by providing notice of at least one rent period (not exceeding two months). In cases of non-payment of rent, the lessor has the right to terminate the contract. However, if rent is payable monthly or at longer intervals, the lessor must first notify the tenant of the required payment within a period of no less than 15 days.

Law stated - 30 April 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings commence when a plaintiff files a complaint with the competent court and pays the court filing fee. If the complaint is accepted, a court officer will commence serving a summons and a copy of the complaint on the defendant at the address provided by the plaintiff. If the defendant's address is overseas, the court will proceed with service through an international express mail service, an international mail service provider, or the Office of the Court of Justice and the Ministry of Foreign Affairs via diplomatic channels. In the case of overseas service, the plaintiff must submit translations of the summons and complaint to the court in the certified official language of the defendant's country or in English.

The capacity of courts to handle their caseloads can vary depending on various factors such as resources, efficiency, and the volume of cases. Some courts may experience challenges in managing their caseloads, leading to backlogs and delays in proceedings. To address this issue, courts may occasionally extend their operating hours into the evenings and hold weekend sessions to expedite the resolution of cases and reduce the backlog.

A plaintiff must pay court fees when filing a case. For monetary claims, the court filing fee is 2 per cent of the claim amount, capped at 200,000 baht for claims under 50 million baht. If the claim amount exceeds 50 million baht, an additional 0.1 per cent will be charged for the amount exceeding that limit. For petty cases where the claim amount is less than 300,000 baht, the court filing fee remains the same as in monetary claims, but the total fee shall not exceed 1,000 baht. For non-monetary claims, the court fee is 200 baht per case.

In filing a petition for the enforcement or setting aside of a domestic arbitral award, the court fee is at the rate of 0.5 per cent of the claim amount, capped at 50,000 baht for claims under 50 million baht. For a foreign arbitral award, the court fee is at the rate of 1 per cent of the claim amount, capped at 100,000 baht for claims under 50 million baht. If the claim amount

exceeds 50 million baht, an additional 0.1 per cent is applied to the amount exceeding that limit, similar to the general civil claim.

In addition to the court filing fee, the plaintiff is required to pay a fee for the service of summons. The fees vary based on the distance travelled and the difficulty of the service.

In a consumer claim, a consumer is exempt from paying court fees. However, if the court determines that a consumer files a lawsuit without reasonable grounds, claims excessive damages, or otherwise carries out the proceedings in any way the court deems inappropriate, the court may order such consumer to pay court fees.

Law stated - 30 April 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Filing of complaint a service of complaint

Once the plaintiff files the complaint with the court, a court officer will commence serving a summons and a copy of the complaint on the defendants. The defendant has 15 or 30 days, depending on the means of service, to file an answer or counterclaim. If the defendant accepts the service, the defendant has 15 days from the date of service to file an answer. If the complaint is served by posting the documents at the defendant's premises, the service will be considered effective 15 days after the posting date which means the defendant will have 30 days from the posting date to file an answer. In practice, defendants often apply for an extension of time to file an answer, and such requests are generally granted by the court if made on reasonable grounds.

First hearing (pretrial)

Typically, 45 to 60 days after the filing of a complaint, the parties or their lawyers are required to attend the first hearing. During this hearing, the court will review the pleadings filed by the parties, determine the issues in dispute, burden of proof, direct any party to adduce evidence first or afterwards, and schedule a date for the witness examination. The parties must inform the court of the number of witnesses they wish to present at the witness examination hearing. The number of hearings depends on the number of witnesses, the amount of documentary evidence, and the complexity of the case. The court may schedule a mediation hearing and appoint a mediator to assist if it believes there is a likelihood of reaching a settlement between the parties, or upon the parties' request.

If the first hearing is scheduled to take place before the time limit for filing the answer and the defendant has not yet filed the answer with the court, the court is unable to proceed with the determination of the issues in dispute due to the lack of an answer. In such cases, the court needs to adjourn the hearing until the answer is filed.

Witness Examination Hearing (trial)

The witness examination hearing will take place within two to eight months after the first hearing, depending on the caseload of the court and complexity of the case. Once the witness examination is completed, the parties may request to file a closing statement with the court within the given time frame, typically 15 to 30 days.

Judgment

The court will schedule the hearing to read the judgment, typically within one to two months after the completion of witness examination hearing.

Law stated - 30 April 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties can challenge the court's jurisdiction on several grounds, including but not limited to claim amount, territorial, the nature of the claim, and existence of arbitration agreement.

Claim amount and territorial

For a civil claim not falling under the jurisdiction of specialised courts, the plaintiff must file a complaint with a district or provincial court, depending on the claim amount, in the jurisdiction where the defendant is domiciled or where the cause of action arose, unless otherwise provided by law. The defendant may file a petition with the court to challenge jurisdiction. If the court determines that it lacks jurisdiction over the case, it may issue an order to strike out the case.

Nature of claim

The plaintiff must determine whether the case falls under the jurisdiction of the specialised court and which specialised court. If there is a dispute regarding whether a case falls under the jurisdiction of a specialised court, regardless of whether the court where the dispute arises is a specialised court, the defendant may file a petition with the court to challenge jurisdiction. The proceedings shall be stayed and such a matter shall be escalated to the President of the Court of Appeal for Specialised Cases for consideration. The ruling of the President of the Court of Appeal for Specialised Cases is final. If it is determined that the competent court should be changed, the previous court shall transfer the case to the competent court. Any proceedings already initiated in the previous court shall remain in effect, unless the competent court decides otherwise in the interest of justice.

Arbitration agreement

If any party to an arbitration agreement initiates legal proceedings against the other party concerning a dispute covered by the agreement, the defending party may file a petition, at the time of filing their statement of defence or within the legally specified period, to

challenge the court's jurisdiction. The court of first instance is empowered to consider this challenge of jurisdiction. If there are no grounds for rendering the arbitration agreement void, unenforceable, or impossible to perform, the court shall issue an order to strike out the case, enabling the parties to commence or continue arbitration proceedings.

Anti-suit orders are not applicable.

Law stated - 30 April 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The parties have no full control over the procedure, timetable, or dates of the hearings. Upon filing, the plaintiff sets the first hearing date with the court, leaving no opportunity for the defendant to schedule the first hearing. Therefore, the defendant may seek to reschedule due to a calendar conflict. Subsequently, the scheduling of court appointments depends on the mutual availability of the parties within the timetable determined by the court. If the witness examination cannot be concluded within the timetable imposed by the court due to reasons such as protracted examination proceedings, the court may further reschedule or set another hearing date. Moreover, the parties may request postponement or rescheduling of the hearings based on reasonable grounds.

Regarding time limits, the laws establish deadlines for the submission of pleadings; for example, 15 days for filing an answer. However, parties may request extensions based on reasonable grounds.

Nevertheless, the court retains discretion in considering whether to grant permission for such a postponement or extension.

Law stated - 30 April 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no such duty under the law. The parties have the right to determine the evidence to be presented to court in support of their case. The parties may request the court to issue a subpoena to compel, either the opposing party or a third party, to produce documents or other evidence to the court within the given time frame, unless there are reasonable grounds for refusal, such as confidentiality or the possibility of causing damage to third parties if documents are produced. The court will review the subpoena request to determine whether the requested documents are relevant to the case, thus preventing bad faith attempts to subpoena confidential, personal, or sensitive information which are not relevant to the case from third or opposing parties.

Law stated - 30 April 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Attorney–client privilege is recognised under Thai law. While the Regulations of the Lawyers Council on the Conduct of Lawyers BE 2529 (AD 1986) prohibit lawyers from disclosing confidential information about clients unless clients have consented or a court order has been obtained, those Regulations only apply to licensed lawyers who have been registered with the Lawyers Council of Thailand.

Nevertheless, it is a criminal offence under section 323 of the Thai Criminal Code for legal advisers, consultants or professionals, including their staff, to disclose confidential client information that may cause harm to the client. Any licensed or non-licensed lawyers, including in-house lawyers are, therefore, bound by this confidentiality obligation.

A court order or subpoena would override attorney–client privilege and confidentiality obligations.

Law stated - 30 April 2025

Evidence – pretrial

- 11** | Do parties exchange written evidence from witnesses and experts prior to trial?

There is no pretrial discovery process in Thailand. However, the parties may seek the court's permission to submit written witness statements in advance, in which case the written statements will be regarded as the examination-in-chief. If the court grants such permission, each party must file the written statement with the court and serve it on the opposing party within the period specified by the court, which is generally not less than seven days before the scheduled testimony of the witness.

Under the Civil Procedural Code, parties are required to submit a list of the evidence and documentary evidence that the parties intend to present at trial to the court and provide copies to the opposing party at least seven days before the first witness examination hearing. Failure to do so would result in inadmissibility of evidence, unless the court rules otherwise, taking into account special circumstances.

Law stated - 30 April 2025

Evidence – trial

- 12** | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Most evidence is presented through the witness statement and oral testimony of witnesses who give evidence under oath and submission of documentary evidence. The judge may, at their discretion, conclude and record the testimony given by the witness and only necessary

facts related to the case are recorded. To ensure that testimony is accurately recorded, the parties generally request to submit a written statement instead of providing oral evidence, for the convenience of all parties. That written statement stands as the examination-in-chief and does not bar the right of the witness to give further oral evidence before the court. The witness who submits the written statement is required to attend the hearing to affirm their written statement and to be cross-examined by the opposing party. Failure to attend would result in inadmissibility of witness statement.

Once the examination-in-chief is finished, the opposing lawyer has an opportunity to cross-examine the witness. The lawyer who has called a witness may then re-examine the witness with regard to matters answered by the witness during cross-examination.

All court proceedings are conducted in Thai. If a foreign witness is required, they would need to testify through a translator. Documents in a foreign language must be translated into Thai, and only the original documents are admissible as evidence. Copies of those documents are admissible where parties mutually agree to admission; the original document has been lost or destroyed for reasons beyond the parties' control or it is in the interest of justice to produce a copy; the original document is in official custody or control; or the opposing party does not object to that admission.

Law stated - 30 April 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies available upon application at any time before the court renders its judgment include seizure or attachment orders, restraining orders, orders directing government authorities to suspend or revoke any registration, and orders for provisional arrest or detention. These orders may only be granted in respect of proceedings in Thailand. Search orders are not available for civil proceedings.

Emergency injunctive remedies are available by filing a separate motion establishing the emergency with an application for the injunctive remedies. If the court is satisfied of the urgency and grounds of the application, the court will consider and make a decision on the application on the same day on an *ex parte* basis.

When granting orders for interim remedies, the court often requires the applicant to provide security in the amount deemed appropriate by the court, as a guarantee for any losses that may be incurred as a result of the relief.

Law stated - 30 April 2025

Remedies

14 | What substantive remedies are available?

Courts are empowered to award punitive damages but rarely do so. Punitive damages have been officially prescribed in several laws such as the Trade Secret Act, the Promotion and Development of Quality of Life of Persons with Disabilities Act, the Product Liability Act, the Consumer Case Procedural Act and the Personal Data Protection Act.

Courts are empowered to render judgments ordering the payment of interest on money judgments up to the date of full payment at the contractual rate agreed between the parties, or at the statutory rate.

Law stated - 30 April 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In Thailand, parties are able to resolve disputes through informal settlement discussions, which can occur without involving the court, providing flexibility for reaching a resolution. If an agreement is reached during these negotiations, the parties have the freedom to formalise it into a settlement agreement outside of the court system. However, should any party breach the settlement agreement, another party will need to file a lawsuit with the court to enforce it. Alternatively, the parties may request the court to issue a consent judgment endorsing the settlement agreement, allowing them to immediately proceed with the execution of judgment in case of breach.

Law stated - 30 April 2025

Enforcement

- 16** | What means of enforcement are available?

After the court renders a judgment, the court will issue a decree requiring a judgment debtor to perform in accordance with the court judgment within a certain period of time, typically 15–30 days. If the judgment debtor fails to comply with the judgment, the judgment creditor is entitled to request the court to issue writ of execution against the judgment debtor, where an execution officer will be appointed for the purposes of seizing the property, executing attachment of claims against third parties and liquidating the seized property by auction. The judgment creditor is, however, responsible for locating the debtor's assets.

Law stated - 30 April 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings in civil proceedings are open to the public. However, the court may proceed with a hearing behind closed doors for public interest reasons or to prevent the disclosure of all or any of the facts or circumstances of the case from the evidence taken.

Court documents such as pleadings, witness statements and court orders are not available to the public. Third parties that have a legitimate interest or a reasonable ground may request access to court documents.

However, no permission may be granted to any person other than a party or witness in a case tried in confidence. In certain instances, the court may issue an order prohibiting the inspection or copying of all or any documents to maintain order or protect public interest, even if requested by a party or witness. Nonetheless, the right of any party to inspect, make copies of a judgment or order, or request certified copies thereof, shall not be precluded.

Law stated - 30 April 2025

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Courts have the power to order the unsuccessful party to pay the successful party's costs including but not limited to court fees, lawyer's fees, and expenses related to the court proceedings. However, large awards on costs are not common in Thailand. The amount is determined at the court's discretion, considering factors such as the complexity of the case, time devoted, and work performed by lawyers, within statutory maximum rates tied to the value of the claim prescribed in the Schedule attached to the Civil Procedure Code. For monetary claims, the amount of lawyer's fee awarded by the court of first instance is limited to 5 per cent of the claim value. In the appeal court and Supreme Court, it is limited to 3 per cent of the claim value. In any event, the lawyer's fee shall not be less than 3,000 baht. The amount of expenses related to the court proceedings is limited to 1 per cent of the claim value.

The plaintiff may be required to provide security for the defendant's costs upon request of the defendant, at any time before judgment, under the following special circumstances:

- if the plaintiff is not domiciled in Thailand or does not carry on business in Thailand and the defendant can prove that the plaintiff does not have property liable for execution in Thailand; or
- where there is strong reason to believe that the plaintiff will evade payment of costs when losing the case.

Law stated - 30 April 2025

Funding arrangements

19 |

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

There are no specific rules governing contingency or conditional fee arrangements between lawyers and clients. However, according to the Supreme Court judgments, lawyers are prohibited from having any interest in the outcome of the case and such arrangements are contrary to public policy and good morals. Therefore, such arrangements are void and unenforceable in Thailand.

Third-party funding is not a recognised concept under Thai law. However, based on the Supreme Court judgments, the courts tend to view any form of third-party funding without any interest in the litigation or with intent to profit from the disputes between other parties as contrary to public policy and good morals. Third-party funding is therefore void and unenforceable in Thailand.

Law stated - 30 April 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Insurance for a party's legal costs is not extensively available in Thailand. However, it is generally available overseas and may include the costs of litigation conducted in Thailand.

Law stated - 30 April 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class action lawsuits in Thailand can only be filed by the plaintiff, meaning that there is no defendant class action. The Civil Procedure Code does not specify the number of people required to file a class action claim. All courts in Thailand, except for district courts, have jurisdiction over class action claims. Cases that are eligible for class action are as follows: wrongful acts; breaches of contract; and rights claims that derive from other laws, such as environmental laws, consumer protection laws, labour laws, securities and exchange laws, and trade competition laws.

Law stated - 30 April 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

For general civil cases, appeal to the Appeal Court must be made within one month of the date of the decision of the court of first instance. An appeal on question of fact where the value of the property or the amount in dispute in the appeal court does not exceed 50,000 baht is prohibited, unless the judge of the court of first instance trying such case has given dissenting opinion or has certified that there are reasonable grounds for appeal or, in absence of any such dissenting opinion or certification, unless the permission to appeal is given by the chief judge of the court of first instance or by the competent chief judge of the region, as the case may be. An appeal on question of law is permissible. For a labour case, only appeal on question of law can be appealed.

Further appeal to the Supreme Court must be made within one month of the date of the decision of the Appeal Court. Appeal to the Supreme Court is not an automatic right. The parties must request permission to appeal from the Supreme Court, and permission will only be granted if the appeal is a significant matter worthy of consideration. Section 249 of the Civil Procedure Code sets out 'significant matters' as follows:

- matters relating to the public interest or public policy;
- when a judgment or an order of the appeal court in a significant question of law is contrary to the general precedent of judgments or an order of the Supreme Court;
- when a judgment or an order of the appeal court determines a significant question of law that does not yet have a precedent or order of the Supreme Court;
- when a judgment or an order of the appeal court is contrary to final judgments or orders of other courts;
- those with the purpose of developing legal interpretation; and
- other significant matters as prescribed by the regulations of the president of the Supreme Court.

Other significant matters are provided by the Regulation of the President of the Supreme Court regarding the application for the request for permission to appeal to the Supreme Court in Civil Case BE 2564 (AD 2021) as follows:

- the judgment or order of the appeal court contains dissenting opinion in the significant matter and it is deemed appropriate to consider by the Supreme Court;
- the judgment or order of the appeal court in the significant question of law contradicts an international convention ratified by Thailand; and
- the judgments or orders of the court of first instance and the appeal court are contradicting on a significant issue and it is deemed appropriate to consider by the Supreme Court.

If permission is not granted by the Supreme Court, there will be no further appeal in any form and the case is final.

Law stated - 30 April 2025

Foreign judgments

23 What procedures exist for recognition and enforcement of foreign judgments?

Thailand is not a party to any conventions on recognition and enforcement of foreign judgments. There are no specific rules governing the recognition and enforcement of foreign judgments. However, Thai courts accept foreign judgments as evidence in a new trial. The only option for a judgment creditor to enforce a foreign judgment is by commencing new proceedings in Thai courts. Even if the foreign judgment is based on the merits of the case, the plaintiff must present all key witnesses and testimony in the new proceedings. The plaintiff must show that the foreign judgment is a final judgment in the relevant foreign jurisdiction where all avenues of appeal have been exhausted. The grounds of a foreign judgment would also need to be clear.

Law stated - 30 April 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Thailand is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970. However, Thai courts may issue a letter rogatory to the foreign court to examine the witness in other jurisdictions and transmit a deposition back to a Thai court on the basis of judicial cooperation or through diplomatic channels. Likewise, the court will assist in obtaining the documentary evidence required through the same diplomatic channels for use in civil proceedings in other jurisdictions.

Law stated - 30 April 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Thai arbitration law as codified under the [Thai Arbitration Act BE 2545 \(AD 2002\)](#) was generally modelled upon the UNCITRAL model, which replaced the 1987 Act. Two forms of arbitration are recognised under Thai law: in-court arbitration and institutional arbitration.

In-court arbitration is governed by the Civil Procedural Code. The parties file with the court a joint application to submit a dispute in reference or all issues pending before a court of first instance to the arbitrator for settlement.

At present, there are three well-known arbitration institutions in Thailand: the Thai Commercial Arbitration Committee of the Board of Trade of Thailand, the Thai Arbitration Institute and the Thai Arbitration Centre.

In addition, arbitration has been promoted by various government authorities to solve commercial disputes governed by special laws. For example, disputes arising from insurance agreements shall be resolved by a registered arbitrator of the Office of Insurance Commission; disputes arising from intellectual property laws shall be resolved by a

registered arbitrator of the Department of Intellectual Property; and disputes arising from securities and exchange laws, provident fund laws or derivative laws shall be resolved by a registered arbitrator of the Securities and Exchange Commission.

Law stated - 30 April 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing and signed by the parties, which may be in the form of a clause in contract or in the form of a separate agreement. An exchange between the parties through letters, facsimiles, telegrams, telex, data exchange with an electronic signature or other means that provide a record of the agreements. A statement of claim or defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other also constitutes an enforceable arbitration agreement.

Law stated - 30 April 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement is silent, a sole arbitrator is appointed. If the parties are unable to agree on the arbitrator, either party may file a motion with the court requesting the court to appoint an arbitrator.

The parties may challenge the appointment of an arbitrator if circumstances exist that give rise to justifiable doubts as to their impartiality, independence or qualification agreed by filing a statement with the arbitral tribunal. If the challenge filed with the arbitral tribunal is unsuccessful, the challenging party may request the court to challenge. Nevertheless, no party shall challenge the arbitrator appointed except where the said party is not aware of the grounds for challenge at the time of the appointment.

Law stated - 30 April 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The parties may choose arbitrators from the list of arbitrators of the relevant institute. The candidates are equipped with professional experiences from various professions, such as civil and commercial law, engineering, investment, international law and communication technology, to cater for various levels of complexity of arbitration. The parties are also free

to choose an unlisted arbitrator, subject to the mutual agreement of both parties; however, this is rare in practice.

Law stated - 30 April 2025

Arbitral procedure

- 29** | Does the domestic law contain substantive requirements for the procedure to be followed?

Arbitral procedure is subject to the rules of the arbitration institutes selected by the parties in arbitration agreements. Where an agreement stipulates that any dispute shall be settled by arbitration without referring to specific arbitration rules, the parties may follow the rules of the institute where the claim is submitted.

Law stated - 30 April 2025

Court powers to support the arbitral process

- 30** | What powers do national courts have to support the arbitral process before and during an arbitration?

An arbitral tribunal or a party with the consent of the majority of the arbitral tribunal may request the court to issue a subpoena or order for submission of any documents or materials during an arbitration. In addition, a party to arbitration may request the court to issue an order for interim relief before or during the arbitration proceedings. If the court is satisfied that had such proceedings been in court, the court would have been able to issue a subpoena, court orders and interim relief, the court may proceed as requested. The relevant provisions under the Civil Procedure Code apply. Furthermore, the court can make a final decision on silent matters or other matters, such as the appointment, challenging and jurisdiction of arbitrators. The court's powers cannot be overridden by agreement.

Law stated - 30 April 2025

Interim relief

- 31** | Do arbitrators have powers to grant interim relief?

The Thai Arbitration Act does not expressly afford arbitrators the authority to order interim relief unless the rules of the arbitration institute agreed between the parties specify the arbitral tribunal's power to award interim remedies. However, there are no formal written laws and it is uncertain as to whether the interim remedies awarded by arbitrators are enforceable.

Law stated - 30 April 2025

Award

32 | When and in what form must the award be delivered?

There is no statutory time limit within which an award must be delivered unless otherwise specified in the rules of the arbitration institute. The award shall be made in writing and signed by members of the tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the majority shall suffice, provided that the reason for the omission of signatures for the remaining arbitrators is stated.

Law stated - 30 April 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

A party may file an application for setting aside the arbitral award with the competent court within 90 days of receipt of a copy of the award or of the correction or interpretation or of an additional award.

The court shall set aside the arbitral award if the applicant can prove that:

- a party to the arbitration agreement was under some incapacity under the law applicable to that party;
- the arbitration agreement is not binding under the law of the country agreed by the parties, or failing any indication thereon, under the law of Thailand;
- the party making an application was not given proper advance notice of appointment of the tribunal or the arbitral proceedings or was otherwise unable to defend the case in the arbitral proceedings;
- the award deals with a dispute not within the scope of the arbitration agreement (if the award on the matter that is beyond the scope thereof can be separated from the part that is within the scope, the court may set aside only the part that is beyond); or
- the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or unless otherwise agreed by the parties.

The court shall also set aside the arbitral award if the court finds that:

- the award involves a dispute not capable of settlement by arbitration; or
- the recognition or enforcement of the award would be contrary to public policy.

An appeal against the lower court judgment under the Arbitration Act must be filed with the Supreme Court or the Supreme Administrative Court, as the case may be. Decisions of the lower court can only be appealed in the following circumstances:

- the recognition or enforcement of the award is contrary to public policy;

- the order or judgment is contrary to the provisions of law concerning public policy;
- the order or judgment is not in accordance with the arbitral award;
- the judge who sat in the case gave the dissenting opinion; or
- the order concerns provisional order measures for protection under section 16 of the Arbitration Act.

Law stated - 30 April 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Thailand is a party to the New York Convention and has implemented the Arbitration Act in accordance with its provisions. The award shall only be enforced if it is subject to an international convention, treaty or agreement to which Thailand is a party, and such award shall be applicable only to the extent that Thailand accedes to be bound.

The party seeking enforcement of foreign and domestic awards is required to file an application with the competent court within three years of the day that the award becomes enforceable and produce the following documents to the court:

- an original or certified copy of the arbitral award;
- an original or certified copy of the arbitration agreement; and
- a Thai translation of the award and of the arbitration agreement by a translator who has taken an oath or who was affirmed before the court or in the presence of an official or an authorised person, or who was certified by an official authorised to certify translations or by a Thai envoy or consul in the country where the award or the arbitration agreement was made.

The court may refuse enforcement of the arbitral award, regardless of where it was made, if the party facing enforcement can prove that the award has not yet become binding, that the award has been set aside or suspended by a competent court or under the law of the country where it was made, or that there are any of other grounds for setting aside of the arbitral award.

Law stated - 30 April 2025

Costs

35 | Can a successful party recover its costs?

Unless otherwise agreed by the parties, the fees and expenses of the arbitral proceedings and the remunerations for the arbitrator, excluding attorneys' fees and expenses, are paid in accordance with the terms stipulated in the award.

Law stated - 30 April 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative dispute resolution (ADR) options available in Thailand are out-of-court arbitration, court-annexed arbitration, court-supervised mediation, out-of-court mediation and negotiation. In 2019, Thailand passed the new Mediation Act BE 2562 (AD 2019), which allows the parties to resolve the dispute by certified mediators outside the courthouse and allows mediation to be enforced by the court if the other party does not comply with it. Furthermore, in 2020, an amendment was made to the Civil Procedure Code permitting court-supervised pre-litigation mediation to take place prior to the actual filing of the case. Importantly, these mediation processes are not subject to any court fees. If mediation is unsuccessful and the prescription period has lapsed after the filing of the application or it will lapse within 60 days of the date of the mediation's conclusion, the prescription period shall be extended for 60 days from the end of the mediation. In Thailand, parties to disputes often resolve their disputes through informal negotiations.

Law stated - 30 April 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no requirement for the parties to consider ADR before litigation or arbitration and the court or tribunal cannot compel the parties to participate in an ADR process.

However, some specialised cases in specialised courts are required by law to have a mediation session before going to trial for the purpose of a continuous relationship between the parties, such as in family and labour disputes.

Law stated - 30 April 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The Act on the Timeframe of Judicial Proceedings BE 2565 (AD 2022) was put into effect on 23 January 2023 after being enacted on 25 October 2022. Its purpose is to enhance

the efficiency of judicial administration in Thailand and establish a clearer timeframe for judicial proceedings.

According to this act, judicial authorities in Thailand including the Courts of Justice, are required to establish specific timeframes for each stage of their judicial services. In line with this, the Office of Judiciary has issued the Judicial Regulation on the Timeframe for Court Cases BE 2566 (AD 2023), which became effective on 24 January 2023, to govern the timeframe of court proceedings. The Regulation outlines specific timeframes for each stage of proceedings in the Court of Justice based on the case type at each court level.

The Regulation classifies cases in the court of first instance into three categories:

1. **Special Management Case:** A case without complexity that is likely to be resolved in one hearing or through document submission instead of witness examination. The time frame is six months from the date of the order accepting the complaint.
2. **Ordinary Case:** A case that requires witness examination and cannot be resolved quickly. The timeframe is one year from the date of the order accepting the complaint. However, for criminal cases where the defendant is detained during the proceedings, the time frame is six months from the issuance of the arrest warrant. Additionally, for all types of civil and criminal cases falling under the jurisdiction of the district court, the timeframe is six months from the date of the order accepting the complaint.
3. **Extraordinary Case:** A complicated case that cannot be completed within one consecutive session of witness examination, requiring multiple sessions of consecutive days of witness examination, two to four days per session. The time frame is one year from the date of the order accepting the complaint.

The time frame for the Appeal Court with jurisdiction over cases decided by the courts of first instance in Bangkok, the Regional Appeal Courts with jurisdiction over cases decided by courts of first instance outside Bangkok, and the Specialised Appeal Courts to consider the appeal are between four months and one year from the date of receiving the case file from the court of first instance. The specific duration within this time frame depends on the type of case.

The timeframe for the Supreme Court to consider the appeal is one year from the date of receiving the case file from the court of first instance, except for some types of criminal cases and civil or criminal cases where witness examination is required at the Supreme Court stage.

Additionally, the Regulation provides specific timeframes for the consideration of various petitions such as petitions for provisional release and release orders, refund of court fees, matters seeking the decision of the President of the Appeal Court, and permission to appeal to the Supreme Court.

Furthermore, the Administrative Court and Constitutional Court have also issued their regulations to define the time frame applicable to their proceedings.

Law stated - 30 April 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39 | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

There are no proposals for dispute resolution reform.

Law stated - 30 April 2025



Pisut Rakwong
Supachoke Pongdasakorngamjai

pisut@pisutandpartners.com
supachoke@pisutandpartners.com

Pisut & Partners

[Read more from this firm on Lexology](#)

Ukraine

Andrii Chornous, Iryna Nahorniak

Hillmont Partners

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The civil court system of Ukraine includes courts of general (civil) and commercial jurisdictions. General jurisdiction courts consider cases that, first, have a civil law dispute (including land, labour, family and housing disputes), and second, one of the parties to the dispute (plaintiff or defendant) is, as a rule, an individual. Commercial courts typically try disputes between legal entities (or individuals registered as entrepreneurs) that relate to the parties' commercial activities (eg, debt collection, insolvency and corporate disputes). Both civil and commercial courts are divided into three instances.

- First instance courts are represented by general district courts (civil jurisdictions) or by regional commercial courts and the Commercial Court of Kyiv City (commercial courts). Notably, cases on challenging international commercial arbitral awards and their enforcement are considered by civil appeal courts as courts of first jurisdiction (article 23(2) of the Civil Procedure Code of Ukraine). Cases are considered by a single judge.
- Appeal civil and commercial courts. Hearings are conducted by three-judge panels.
- Cassation instance is represented by the Supreme Court. Hearings are conducted by panels of three or more judges (must be an odd number).

Law stated - 30 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Although the litigation process in Ukraine is quite formalised, the judges perform rather active inquisitorial functions. The role of the jury is minimal. Under article 293(2) of the Civil Procedure Code of Ukraine (CPCU), in first-instance civil courts, two jurors should be engaged in special proceedings along with the judge to adjudicate the following types of cases:

- restriction of individual's civil capacity, establishment of incapacity or restoration of individual's civil capacity;
- recognition of an individual as missing or declaring him dead;
- adoption;
- ordering compulsory psychiatric care; and
- forced hospitalisation in a TB facility.

To serve as a juror, an individual must be at least 30 years old, have permanent residency within the jurisdiction of the relevant district court (unless otherwise provided by law), and

fulfil other requirements per article 65 of the CPCU. To become a juror, a person should apply to the local council for inclusion in the jury list. If a person meets all requirements, the local council includes him on the list of jurors, which is then forwarded to the relevant court. When jury service is required, the court's automated document management system selects jurors for a particular case.

Law stated - 30 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

The Civil Code of Ukraine (the CCU) distinguishes general and special limitation periods. The general limitation period is three years (article 257 of the CCU). Special limitation periods are as follows:

- one year – collecting penalties (fines); refuting inaccurate information published in the media; claims relating to the defects in goods; termination of gift contracts (article 258(2) of the CCU); and
- four years – claims on declaring assets unjustified and collecting them in the state's favour (article 258(5) of the CCU).

The statutory defined general and special limitation periods cannot be shortened, but they could be extended by written agreement between the parties.

Law stated - 30 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

As the Constitutional Court of Ukraine clarified in its decision dated 9 July 2022 No. 15-rp/2002, any mandatory pretrial settlement procedures would violate the constitutional right to judicial protection. Therefore, although the parties may agree on specific pretrial dispute resolution procedures, the latter may not impede the right to seek justice in a court of law.

Law stated - 30 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil and commercial court proceedings commence when a judge issues a ruling on opening court proceedings. A statement of claim filed to the general civil court must be accompanied, in particular, by copies of the claim and exhibits pro rata to the number of case participants (article 177 of the Commercial Procedure Code of Ukraine). Claims filed to commercial courts should have attached proof of dispatch, showing that the claim and exhibits have been sent by certified mail to all case participants (article 164 of the Commercial Procedure Code of Ukraine). Ukrainian courts (especially civil ones) are backlogged. An estimated timeframe for a civil case consideration in the first instance is six to 12 months (depending on the court and the judge), while in the first instances of commercial courts, which are a bit more nimble, it would take approximately four to eight months to try a case in the first instance. All claims filed with courts must have proof of court fee payment, which should be calculated based on the Law of Ukraine 'On Court Fees'.

The information on case status is publicly available at the governmental website 'Judiciary' (<https://court.gov.ua/fair>). All court decisions with anonymised personal data are publicly available in the Unified State Register for Court Decisions (<https://reyestr.court.gov.ua>).

Law stated - 30 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The statutory length of civil and commercial general proceedings shall not exceed 125 days, while the time limit for the expedited proceedings is 65 days. The 125-day time limits consist of the following stages:

- five days for commencing proceedings;
- 60 days for preparatory proceedings (filing key procedural documents and evidence gathering), which may be extended for 30 days; and
- 30 days for the case consideration on the merits.

In practice, however, civil cases are considered in six to 12 months in the first instance (depending on the court and the judge) and commercial cases, on average, for four to eight months.

Law stated - 30 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The parties can challenge the court's subject matter and territorial jurisdiction. This should be done through a motion to terminate the proceedings (in particular, due to lack of subject matter jurisdiction). The parties cannot get anti-suit injunctions but can petition

for proceedings suspension before a related matter is considered on the merits, and a judgment does not enter into force (what happens after the appeal review).

Law stated - 30 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Procedure and timetable of litigations generally should comply with the time frames and stages set by the Ukrainian procedural codes, but the parties cannot control the timetable. As a rule, hearing dates are selected by judges based on their availability.

Law stated - 30 May 2025

Evidence – documents

9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

The Ukrainian inquisitorial judicial process heavily relies on written submissions. Since all judgments must be entered based on available case materials, the parties are interested in filing all available relevant and material substantive evidence with their submissions.

Generally, evidence must be submitted to the court before or during the preliminary hearing phase of case consideration.

Ukraine, as a civil law country, does not provide for a duty to preserve documents and other evidence pending trial. A claimant, however, can request the court to take interim measures to preserve evidence before filing a claim if there is a risk that the evidence might be lost or that its collection or submission may later become impossible or difficult.

Also, there are no common law document production procedures. Nonetheless, the courts may oblige other parties to produce certain evidence stored within the custody or control of the addressees *sua sponte* or based on the parties' motions.

Law stated - 30 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The Law of Ukraine 'On the Bar and Practice of Law' states that attorney–client communication, legal advice, and other information obtained by an attorney during professional activities are protected by attorney–client privilege. This privilege does not

extend to in-house counsel or foreign lawyers unless they are admitted to the Bar in Ukraine.

Further, Ukrainian law mandates confidentiality for certain documents and will only allow their disclosure upon a court order. The protected categories of information include:

- personal data and medical records of individuals;
- information stored by notaries;
- confidential business information, including trade secrets;
- bank secrecy information;
- personal communications and notes;
- details concerning subscribers' communications and other telecommunications services gathered by telecommunications operators; and
- state secrets.

Law stated - 30 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Prior to trial, the parties do not exchange written evidence from witnesses. However, witness statements and expert opinions could be obtained before trial by means of evidence preservation. Such evidence must be filed with the court during the preparatory stage of the case and before the hearing on the merits phase of the case.

Law stated - 30 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

The judge should assess all evidence during the trial. Witnesses and experts may present oral evidence at the hearing (articles 230 and 239 of the Civil Procedure Code of Ukraine).

Law stated - 30 May 2025

Interim remedies

13 | What interim remedies are available?

According to article 150(1) of the Civil Procedure Code of Ukraine, the following interim measures are available for parties in a civil case:

- seizing property or funds owned by or owed to the defendant, whether held by them or by others;
- seizing disputed assets or other assets of the defendant equal to their value for state recovery in cases of unjust enrichment;
- banning specific actions of the defendant;
- requiring certain actions to be taken in disputes stemming from family law;
- prohibiting third parties from acting in ways that affect the dispute's subject matter, including making payments or transferring property to the defendant;
- pausing the sale of seized property if there is a claim to recognise ownership and remove the seizure;
- stopping the enforcement of judgments if the debtor has challenged the enforcement document in court;
- halting the customs clearance of goods or items;
- seizing a vessel to secure a maritime claim; and
- implementing other measures as provided by national laws and international treaties ratified by the Ukrainian parliament.

Under article 137(1) of the Commercial Procedure Code of Ukraine, the following interim measures are available for parties in a commercial case:

- seizing property or funds owned by or owed to the defendant, whether held by them or by others;
- banning specific actions of the defendant;
- preventing third parties from taking any actions related to the dispute's subject, such as making payments, transferring property, or fulfilling obligations towards the defendant;
- halting collections based on a legal document that allows for undisputed collection;
- pausing the sale of property if there is an ongoing lawsuit to recognise ownership of the property, remove it from inventory, or lift a seizure on it;
- halting the customs clearance of goods or items;
- seizing a vessel to secure a maritime claim; or
- implementing other measures as provided by national laws and international treaties ratified by the Ukrainian parliament.

There are no distinctions between reliefs that could be imposed upon a Ukrainian private entity or a foreign private entity. In case of a claim against a state, the latter has to provide prior consent to waive its immunity (article 79 of the Law of Ukraine 'On Private International Law'). The request for interim relief in international arbitration proceedings should be filed to the court of appeal (article 152 of the Civil Procedure Code of Ukraine).

Law stated - 30 May 2025

Remedies

14 | What substantive remedies are available?

Under article 16 of the CCU, the following non-exhaustive list of remedies is available to claimants:

- recognition of the right;
- recognition of the transaction as invalid;
- termination of the action that violates the right;
- restoration of the situation that existed before the violation;
- enforcement of an obligation in kind;
- change of legal relations;
- termination of a legal relationship;
- collection of compensation for damages and other means of compensation for property damage;
- compensation for moral (non-pecuniary) damage; and
- declaring illegal decisions, actions or inaction of a state authority, authority of the Autonomous Republic of Crimea or local self-government body, their officials and employees.

Law stated - 30 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

The parties may enter into a settlement agreement at any stage of the litigation (article 207(2) of the Civil Procedure Code of Ukraine and 192(2) of the Commercial Procedure Code of Ukraine). The parties can keep settlement discussions confidential, but the court-approved settlement agreement should be included in the operative part of the judgment on the merits.

Law stated - 30 May 2025

Enforcement

16 | What means of enforcement are available?

A court decision that entered into legal force is enforced based on an enforcement letter (writ) issued by a court of the first instance, which heard the case. Under article 10 of the

Law of Ukraine 'On Enforcement Proceedings', the following means of enforcement are available:

- Foreclosing on various debtor assets such as funds, securities, intellectual and creative property, and corporate rights, regardless of whether these assets are held or owned jointly by the debtor and others.
- Foreclosing on the debtor's regular income, including wages, pensions and scholarships.
- Confiscating items from the debtor as specified in a legal decision and transferring them to the creditor.
- Prohibiting the debtor from using or managing their property or requiring the debtor to use their property according to terms set by the enforcement officer.
- Other enforcement actions as allowed by the law.

Article 75 of the Law of Ukraine 'On Enforcement Proceedings' provides for a 10 per cent fine for debtors who fail to timely comply with a decision, obliging the debtor to take specific actions and a decision on reinstatement without good reason within the time limit set by the enforcement officer.

There are no contempt orders available against disobeying parties, but if there is a deliberate non-enforcement of a court decision that has entered into force or obstruction to its enforcement, the responsible party shall be punished by a fine of 8,500 to 17,000 hryvna or with imprisonment for a term of up to three years.

Law stated - 30 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings are generally public unless otherwise agreed by the parties or statute. For example, article 7(7) of the Civil Procedure Code of Ukraine allows for hearings to be held in private if: (1) there is a risk of disclosing trade secret or legally protected information during an open court session; (2) upon request of the involved parties to maintain the confidentiality of adoption proceedings; (3) to prevent the revelation of intimate or other personal details of the parties involved, or information that could undermine their dignity; or (4) in other instances designated by law.

Regarding court documents, only case parties and participants can familiarise themselves with the case materials.

When court decisions are published in the public unified state register, the following information shall not be disclosed:

- place of residence or stay of individuals with an indication of address, telephone numbers or other means of communication, email addresses, registration numbers



of the taxpayer's account card, details of identity documents, unique record numbers in the Unified State Demographic Register;

- vehicle registration numbers;
- account numbers with banks, other financial institutions, non-bank payment service providers, payment card numbers, electronic wallets with electronic money issuers; and
- information to ensure the protection of the case or specific procedural actions in a private hearing.

Law stated - 30 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Ukrainian court possesses the authority to mandate costs, covering expenses associated with case proceedings, including: (1) fees for legal services; (2) expenses incurred by engaging witnesses, specialists, translators, experts and expert examinations; (3) costs linked to evidence discovery, on-site evidence inspection and evidence preservation; (4) expenses stemming from other procedural measures essential for case deliberation or its preparatory phases (article 133 of the Civil Procedure Code of Ukraine). The losing party normally covers all the fees of the other party.

Claimant could be required to provide security for the defendant's costs if:

- the claim has signs of being deliberately unfounded or other signs of abuse of the right to sue;
- the plaintiff does not have a place of residence or location in Ukraine registered according to the procedure established by law and does not have property located in Ukraine in an amount sufficient to reimburse the defendant's court costs if the claim is dismissed; or
- the plaintiff's property status or actions to alienate property or other actions may make it difficult or impossible to enforce the court's decision to reimburse the defendant's costs in the event of dismissal of the claim (article 135(4) of the Civil Procedure Code of Ukraine).

Generally, the same rules on costs apply to all civil and commercial claims.

Law stated - 30 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties

bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Ukrainian legislation does not provide definition of 'no win, no fee' agreement. However, the Grand Chamber of the Supreme Court in its decision of 12 May 2020 in case No. 904/4507/18 concluded that a 'success fee' may exist as a form of remuneration for a lawyer, recognised the rights of the parties to determine the type of remuneration as a success fee between the lawyer and the client. Position on the court was based on the principle of freedom of contract and on the European Convention on Human Rights' cases.

Third-party funding is not widespread practice in Ukraine. Only now, due to the full-scale invasion of Russia, third-party funding is getting more popular and popular in investment arbitration against the Russian Federation. Funding litigation against Russia is considered a high-risk investment due to the latter's tactics and possible non-enforcement of arbitration awards. Another risk on the funder's radar is the sovereign jurisdictional and substantial immunity of the respondent's state. Alternative investment managers are particularly interested in entering Ukraine's litigation funding market and financing emerging market litigations and arbitrations (especially governed by the laws of reputable common law jurisdictions).

In terms of whether a party to litigation can share its risk with a third party, Ukrainian legislation does not specify this issue.

Law stated - 30 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Parties are free to use insurance to cover their legal costs. Such possibility is established by paragraph 19 of the Resolution of the Board of the National Bank of Ukraine 'On the Approval of the Regulation on Characteristics and Classification Features of Insurance Classes, Peculiarities of Carrying Out Insurance Activities and Conclusion of Contracts by Insurance Classes', according to which costs should be incurred by the party with insurance. However, insurance payment could be made to another person specified in the contract. Insurance can cover its costs if the opponent falls under such a designation.

Law stated - 30 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

There are no class action procedures in Ukraine. Still, several litigants can act as co-claimants if their claims have the same subject matter, and the co-claimants have rights and obligations arising from the same legal basis.

Law stated - 30 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Ukrainian procedural law allows parties to challenge first-instance court decisions or court rulings by filing appeals to appropriate appeal courts. The reasons for appeal vary, but common grounds for appeal typically include:

- violation of procedural laws;
- misapplication of substantive law;
- failure to ascertain the facts of the case; and
- incorrect determination of the facts of the case.

The Supreme Court (Civil and Commercial Courts of the Supreme Court) may review cassation complaints on appeal courts' resolutions or rulings based on the alleged violation of procedural laws or misapplication of substantive law.

Law stated - 30 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments are recognised and enforced in Ukraine if (1) their recognition and enforcement are provided for by an international agreement ratified by the Ukrainian parliament (Verkhovna Rada of Ukraine) or (2) on the principle of reciprocity (articles 462(1) and 474 of the Civil Procedure Code of Ukraine). The second case applies when there is no reciprocal agreement between the countries.

Law stated - 30 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions are set in reciprocal agreements with different countries on legal aid. In addition, Ukraine is a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1972, the general provisions of which should be complied with.

Law stated - 30 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The Law of Ukraine 'On International Commercial Arbitration' is based on the UNCITRAL Model Law of 1985.

Law stated - 30 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Under the New York Convention and the Law of Ukraine 'On International Commercial Arbitration', the arbitration agreement must be in writing and should be put into the 'container agreement' signed by the parties. The arbitration agreement could be a part of the main contract (article 7 of the Law of Ukraine 'On International Commercial Arbitration'). It is also recommended to avoid any inaccuracies in the arbitration agreement because the Supreme Court, in its Resolution dated 18 October 2017 in case No. 910/8318/16, stated that:

The court may declare the agreement unenforceable due to a material mistake of the parties in the name of the arbitral tribunal to which the dispute is referred (a reference to a non-existent arbitral institution), provided that the arbitration agreement does not specify the place of arbitration or any other provisions that would allow to establish the true intentions of the parties to choose a particular arbitral institution or the rules under which the arbitration proceedings are to be conducted. If the arbitral institution is uncertain, a party to the arbitration agreement shall not be obliged to apply to one or more arbitral institutions before applying to the competent state court to determine their competence regarding the dispute.

Law stated - 30 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

As per article 10(1) of the Law of Ukraine 'On International Commercial Arbitration', in cases where the arbitration agreement does not specify the number of arbitrators to be appointed, there will be three arbitrators.

If there is no agreement on the appointment procedure, the following rule shall apply: each party shall appoint one arbitrator, and these two arbitrators shall appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party or if the two arbitrators fail to agree on the appointment of the third arbitrator within 30 days of their appointment, at the request of either party the arbitrator shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry (article 11(3) of the Law of Ukraine 'On International Commercial Arbitration'). Regarding restrictions, a decision on any matter related to the appointment of an arbitrator in the absence of the agreement or cases determined by paragraph 4 of article 11 of the Law of Ukraine 'On International Commercial Arbitration' shall not be subject to appeal.

Law stated - 30 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The parties are free to choose their arbitrators. The pools of recommended arbitrators are provided by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, Maritime Arbitral Commission at the Ukrainian Chamber of Commerce and Industry, the Ukrainian Arbitration Association and other specialised institutions and organisations operating in Ukraine.

Law stated - 30 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

Ukrainian domestic law grants substantial procedural party autonomy as long as the arbitral tribunal ensures that all parties are treated equally and given a fair chance to present their cases. However, the Law of Ukraine 'On International Commercial Arbitration' specifies certain procedural deadlines in arbitration proceedings:

- objections to the tribunal's jurisdiction must be raised before submitting the defence statement; and
- claims that the tribunal is overstepping its authority should be made as soon as the issue arises during the proceedings.

Despite these rules, the Arbitration Act permits the tribunal to entertain these objections at later stages if deemed appropriate. The Act also outlines the conditions for terminating arbitral proceedings.

The Law of Ukraine 'On International Commercial Arbitration' also establishes default rules covering:

- the number of arbitrators;
- the process for forming the tribunal;
- the grounds for challenging an arbitrator;
- the start date of the proceedings;
- the requirement for a hearing if a party requests it;
- the repercussions for a party's failure to provide required submissions or evidence per the tribunal's request;
- procedures for expert evaluation and cross-examination;
- decision-making processes; and
- the correction and interpretation of the arbitration award.

Law stated - 30 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Ukrainian domestic courts have somewhat restricted authority, which is auxiliary. Ukraine is a favourable competence-competence country, so significant deference is granted towards arbitration.

The Cassation Civil Court of the Ukrainian Supreme Court in its Resolution dated 8 April 2021 in case No. 824/53/19 has described the national courts' authority regarding arbitration as follows:

The court, at the request of one of the parties, shall request evidence in accordance with the procedure established by this Code (Article 477(2) of the CPCU); may, at the request of a person applying for recognition and enforcement of an international commercial arbitration, take interim measures provided for by this Code; may, at the at the request of any of the parties and if there are valid reasons, postpone consideration of the application (Article 477(6) of the Code); may suspend the proceedings in the case if there is an application for cancellation of this decision in the proceedings of the competent court (Article 477, Article 482 of the CPCU); if the award of international commercial arbitration has already been enforced before, it determines in which part or from when it is to be enforced (Article 479 of the CPCU); if the award of international commercial arbitration provides for commercial arbitration award provides for the payment of interest and (or) penalties accrued in accordance with the terms and conditions specified in the award international arbitration award, it shall indicate in its award on recognition and enforcement of such award the accrual of such

interest and/or penalty until the award is enforced, taking into account the current legislation governing such accrual (Article 479(4) of the CPCU).

Law stated - 30 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

According to article 9 of the Law of Ukraine 'On International Commercial Arbitration', articles 149(3) and 477(3) of the Civil Procedure Code of Ukraine, only a civil court can grant interim relief. While arbitrators, under article 25 of the Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, the arbitral tribunal can only determine the size and the form of the interim relief.

Law stated - 30 May 2025

Award

32 | When and in what form must the award be delivered?

Based on article 31 of the Law of Ukraine 'On International Commercial Arbitration', an award must be in written and, as a rule, must be signed by all arbitrators of the Arbitral Tribunal. However, the award can be signed by the majority of arbitrators indicating the reasons for the absence of signatures of other arbitrators. After that, copy of such award should be sent to every party.

Law stated - 30 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Ukrainian legislation provides a possibility for a further appeal of the award in the courts of appeal at the location of the arbitration (article 34(2) of the Law of Ukraine 'On International Commercial Arbitration').

A party can file an appeal on the following grounds (article 34 of the Law of Ukraine 'On International Commercial Arbitration'):

- one of the parties to the arbitration agreement was incapacitated;
- the agreement is invalid by law;
- a party was not duly notified of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to submit its explanation;
-

the award is rendered in respect of a dispute not covered by the arbitration agreement or not subject to its terms, or contains rulings on issues outside the scope of the arbitration agreement; or

- the composition of the arbitral tribunal or the arbitral procedure did not comply with the agreement of the parties, unless such agreement contradicts any provision of law from which the parties may not derogate, or, in the absence of such agreement, did not comply with law.

Law stated - 30 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Ukraine is a party to the New York Convention, so general recognition and enforcement procedures apply. Domestic awards are enforced in accordance with the Law of Ukraine 'On Enforcement Proceedings'.

Notably, after the Russian full-scale invasion, Russia's judicial sovereign immunity (including enforcement immunity) has been uplifted by the Supreme Court under the tort exception (see Resolutions dated 14 April 2022 in case No. 308/9708/19 and dated 18 May 2022 in the case No. 760/17232/20).

Law stated - 30 May 2025

Costs

35 | Can a successful party recover its costs?

Section VIII of the Schedule of Arbitration Fees and Costs of the Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry allows the successful party to recover its costs for protecting its interests in proceedings conducted at the ICAC. Although not provided explicitly, it could be implied that third-party funding costs are covered by costs related to the party's protection in arbitration proceedings. Therefore, they also could be recovered. Such request for reimbursement of costs must be claimed before the completion of the hearing of the case.

Law stated - 30 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

In general, ADR is still an evolving dispute resolution mechanism in Ukraine. The Law of Ukraine 'On Mediation' was enacted on 15 November 2021 and is being offered to parties by Centres of Free Legal Aid. Nonetheless, traditional dispute resolution methods (such as litigation) tend to be far more popular.

Law stated - 30 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Ukrainian laws do not require the parties to consider or commence ADR before or during proceedings. Neither the court nor the tribunal can compel the parties to participate in an ADR process. Such a requirement would be incompatible with the decision of the Constitutional Court of Ukraine dated 9 July 2022 No. 15-rp/2002, which declared that mandatory pretrial settlement of disputes, which excludes the possibility of accepting a claim for consideration and administering justice, violates the right to judicial protection.

Law stated - 30 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Starting in 2017, the Civil Procedure Code of Ukraine was supplemented with a new dispute resolution method: dispute settlement with the participation of a judge (Chapter 4). Although the procedure is quite similar, it should be treated differently from ADR and mediation. The goal is to encourage parties to settle.

A dispute settlement must be conducted before the hearing, with the participation of a judge. The process is confidential, with no minutes of the meeting being recorded and no use of technical devices for recording purposes. The judge is not considered a party but a legal expert whose main function is to resolve a dispute by issuing a ruling. Such settlement is conducted by a judge in charge of the case.

Law stated - 30 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** |

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The last civil procedure reform took place in 2017, which resulted in an updated version of the Civil Procedure Code of Ukraine.

Regarding the last critical cases, decisions, judgments, policy and legislative developments, Ukraine's court practice primarily focuses on disputes against Russia. The Ukrainian Supreme Court has already rendered several significant decisions, including those concerning the uplifting of Russia's sovereign immunity (Resolutions dated 14 April 2022 in the case No. 308/9708/19, dated 18 May 2022 in the case No. 760/17232/20, dated 25 January 2019 in the case No. 796/165/2018). The courts are working on generalising their practice in this area and aligning approaches towards allowable service of process to Russia as a party to the dispute.

Law stated - 30 May 2025



Andrii Chornous
Iryna Nahorniak

chornous@hillmont.com
nahorniak@hillmont.com

Hillmont Partners

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LITIGATION

Court system

1 | What is the structure of the civil court system?

Onshore UAE

The United Arab Emirates (UAE) is a federation of seven Emirates and operates a civil law legal system. The UAE operates a system of federal laws that apply across all Emirates as well as laws that apply in specific Emirates only. Each Emirate has the power to operate its own judicial system, with jurisdiction over all matters not assigned to the UAE federal courts under the Constitution. The Emirates of Dubai, Abu Dhabi and Ras Al Khaimah have their own independent judicial systems that mirror the federal system.

The federal court system comprises of the Court of First Instance, the Court of Appeal and the Federal Supreme Court, the latter being the highest court in the federal system. At the local level, the courts mirror that of the federal system. At each level, cases are heard in Arabic and different types of cases are dealt with in specific courts:

- civil cases ranging from commercial matters to maritime matters are heard by the Civil Court;
- the administration of criminal justice is the responsibility of the Criminal Court; and
- the Sharia (Islamic) Court is responsible for adjudicating on personal status disputes (eg, marriage, divorce, custody and inheritance).

Offshore UAE

In addition, there are over 40 multidisciplinary free zones (Free Zones) in the UAE, which offer various advantages to businesses incorporated within them. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) (which includes both the Al Maryah and Al Reem islands), each with its own standalone 'offshore' common law legal system, are among the most well-known. English common law directly applies in, and forms part of the law of, the ADGM. Certain Free Zones do not apply UAE civil and commercial laws but rather have their own laws and regulations. However, UAE criminal law still applies to them.

The Dubai International Financial Centre Courts (DIFC Courts) and Abu Dhabi Global Market Courts (ADGM Courts) are the courts set up within the DIFC and ADGM respectively. They offer a mix of UAE civil law-trained and international common law-trained judges who hear civil and commercial matters falling within their jurisdiction, in English.

The DIFC has its own legal and regulatory framework based on international standards and principles of common law (although some DIFC laws, such as DIFC Law No. 6 of 2004 (Contract Law) (as amended by DIFC Law No. 2 of 2022 and DIFC Law No. 3 of 2024), also combine some important civil law principles). The DIFC common law is intended to supplement DIFC statute and where there are gaps that are not addressed by either DIFC legislation or any existing judgment of the DIFC Courts, the DIFC Courts may have regard

to the common law of England and Wales and other common law jurisdictions (article 8(2)(e) of DIFC Law No. 3 of 2004 (Law on the Application of Civil and Commercial Laws) as amended by DIFC Law No. 2 of 2022).

In contrast, under the commercial legal framework of the ADGM, English common law directly applies subject to the effect of any contrary provision of an ADGM enactment or Applicable Abu Dhabi Law (which excludes the application of UAE federal civil and commercial laws or any other laws of the Emirate of Abu Dhabi), according to article 1 of the ADGM Application of English Law Regulations 2015.

DIFC Courts

The DIFC Courts were initially governed and established pursuant to Dubai Law No. 12 of 2004 (Judicial Authority Law) and DIFC Law No. 10 of 2004 (DIFC Courts Law). In March of 2025, Dubai Law No. 2 of 2025 concerning the DIFC Courts (New DIFC Courts Law) was enacted, which repealed the Judicial Authority Law and the DIFC Courts Law. While the New DIFC Courts Law is largely similar to the previous regime, there are some notable differences:

- the New DIFC Courts Law now expressly includes employment claims and trust instruments established or registered in the DIFC as jurisdictional gateways (articles 14(2) to 14(4)); and
- there is now a compulsory enforcement regime that applies to enforcement by way of an 'enforcement writ', without the need to commence enforcement proceedings (article 30(A)).

The DIFC Courts have exclusive jurisdiction to hear civil, commercial and employment claims and applications (as the case may be):

- by or against DIFC bodies or DIFC-registered establishments;
- arising from or related to contracts concluded or performed, wholly or partly, in the DIFC;
- arising out of or related to any incident or transaction relevant to DIFC bodies or DIFC-registered establishments;
- arising out of or related to trust instruments established or registered in the DIFC, and non-Muslim wills registered with the DIFC Courts;
- for the ratification or recognition of arbitral awards;
- arising from arbitration procedures: (1) seated in the DIFC; (2) taking place in the DIFC, where the parties have not agreed to a seat; and (3) the parties agree to the jurisdiction of the DIFC Courts for disputes arising out of such arbitration proceedings; and
- where the parties expressly agree in writing to the DIFC Courts' jurisdiction, whether before or after the dispute arises.

The DIFC Courts consist of the Small Claims Tribunal (SCT), the Court of First Instance and the Court of Appeal.

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The SCT operates an informal dispute resolution process where external legal representation is not permitted. It only deals with: (1) claims of less than 500,000 dirhams in value; (2) employment-related claims where the value exceeds 500,000 dirhams (with no upper limit in value) and all parties elect in writing that such employment related claims be heard by the SCT; or (3) claims where the value does not exceed 1 million dirhams and all parties elect in writing that it be heard by the SCT. Such election by the parties may be made in the underlying contract (if any) or at a later stage.

- The Court of First Instance consists of a general division and three specialist divisions: the Technology and Construction Division (TCD), the Arbitration Division and the Digital Economy Court Division (DEC).
- The Court of Appeal has exclusive jurisdiction over: (1) appeals filed against decisions of the Court of First Instance and (2) requests for interpretation made by the Court of First Instance or any DIFC bodies or DIFC-registered establishments (article 17(C) of the New DIFC Courts Law). The Court of Appeal will comprise of one or more circuits, each of which will be made up of three judges (except in exceptional cases where a decision has been issued by the Chief Justice, whereby it will be made up of five judges) (article 17(A) of the New DIFC Courts Law).

Proceedings before the DIFC Courts are conducted in accordance with the Rules of the DIFC Courts (the RDC), which closely mirror the provisions in the English Civil Procedure Rules (English CPR).

ADGM Courts

The ADGM Courts were established in 2015 by Abu Dhabi Law No. 4 of 2013 concerning Abu Dhabi Global Market (ADGM Courts Law). Pursuant to article 6 of the ADGM Courts Law, the ADGM Courts have exclusive jurisdiction to hear:

- civil or commercial cases involving the ADGM or any of its authorities or ADGM-registered establishments;
- disputes arising out of a contract or transaction conducted in whole or in part in the ADGM, or relating to an incident that occurred in the ADGM; and
- appeals against decisions issued by the ADGM authorities.

The ADGM Courts comprise the Court of First Instance and the Court of Appeal:

- the Court of First Instance consists of three divisions: the Commercial and Civil Division, the Employment Division and the Small Claims Division (which hears claims of US\$100,000 or less, except for employment claims); and
- the Court of Appeal has jurisdiction over appeals made against the decisions of the Court of First Instance and the interpretation of ADGM Laws (if the Chief Justice considers it necessary to do so (article 8 of the ADGM Courts Law). Cases in the Court of Appeal are determined by a panel of three judges (article 27(2) of the ADGM Courts Regulations 2015 (ADGM Regulations)).

Proceedings before the ADGM Courts are conducted in accordance with the [ADGM Court Procedure Rules 2016](#) (the ADGM Rules), which also strongly resemble the English CPR.

Law stated - 2 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Onshore UAE

Judges in the onshore courts have an inquisitorial role in civil proceedings. They can exercise a high degree of discretion in deciding their cases (primarily due to the absence of binding legal precedent). Their role entails determining the facts in dispute (although it should be noted that most onshore UAE proceedings are decided 'on the papers' – meaning by documents only with no oral submissions or argument) and ruling on the law. UAE judges are often assisted by reports prepared by court-appointed experts.

At the federal level, up to the Court of Appeal, judges are appointed by the Ministry of Justice. The President of the UAE appoints judges to the Supreme Court following approval by the Federal Supreme Council. Judges of the Supreme Court can only be removed under certain conditions including death, resignation, retirement and appointment to alternative offices (with the judge's consent).

DIFC and ADGM

In contrast, the courts in the DIFC and ADGM follow a 'common law style' adversarial system where two opposing parties present their cases to a judge who determines the facts and law. Judges in the DIFC are appointed by decrees issued by the Ruler of Dubai. The appointment of DIFC Courts judges must be for a specified period, not exceeding three years, and they may be reappointed until they reach the age of 75. ADGM Court judges are nominated by the ADGM Chief Justice and appointed by the ADGM Courts Board.

There are no jury trials in the UAE.

Law stated - 2 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Onshore UAE

Federal Law No. 5 of 1985 Concerning Civil Transactions, as amended in 1987 and 2020 (the [Civil Code](#)), contains the limitation periods applicable under UAE law. Article 298 of the Civil Code provides that the general limitation period for civil claims (an action for damages arising from an unlawful act) is three years from the date on which the victim became aware of the harmful event and the identity of the perpetrator, subject to a maximum of 15 years

from the date on which the harmful event occurred. If criminal proceedings in relation to the relevant events are pending at the time the three-year period expires, the limitation period is extended.

For other types of claims, the limitation periods generally are:

- three years for disputes relating to cheques (article 670(3) of Federal Law no. 50 of 2022, (the [New Commercial Code](#)));
- 15 years for claims in contract (article 473 of the Civil Code) but five years for commercial contracts claims between merchants (article 92 of the New Commercial Code);
- three years for insurance disputes (article 1036 of the Civil Code);
- one year from the date of delivery of the goods for carriage of goods by sea disputes (article 187(1) of Federal Decree Law No. 43 of 2023, (the [Maritime Law](#)));
- two years from the date of termination of the employment contract for employment disputes (article 54(9) of Federal Decree No. 33 of 2021, as amended by Federal Decree Law No. 9 of 2024) (the Labour Code), and one year from the date of termination for disputes under the Labour Code relating to the breach of a non-compete clause (article 10(3) of the Labour Code);
- one year from the date of termination of the contract for employment disputes under the Civil Code, except for disputes relating to the disclosure of trade secrets (article 922 of the Civil Code); and
- 10 years for disputes relating to total or partial collapse of a building or installation (article 880 of the Civil Code).

DIFC

In the DIFC, the position on limitation periods is, generally, as follows:

- in relation to tort claims such as negligence, a claim can be brought no later than 15 years from the date on which the cause of action arose (article 9(2), DIFC Law No. 5 of 2005, the [Law of Obligations](#)). A cause of action is held to arise on the earliest date on which the claimant knows or ought reasonably to know about the loss that gives rise to the cause of action;
- where a cause of action arises as a result of fraud by the defendant, there is no time limit (article 9(1), Law of Obligations);
- an action for breach of contract must, generally, be commenced within six years after the cause of action has accrued, and the parties may in their original contractual agreement shorten the limitation to not less than one year (article 123, Contract Law DIFC Law No. 6 of 2004, the [Contract Law](#)); and
- there are specific limitation periods that relate to other types of claims (eg, employment claims).

ADGM

The ADGM has adopted the English Limitation Act 1980 and the Foreign Limitation Periods Act 1984. The position is, generally, as follows:

- an action in tort or negligence generally must be brought within six years of the date the damage is suffered (article 2 of the English Limitation Act 1980);
- an action in fraud has to be brought within six years from when the claimant discovered the fraud, or when they could, with reasonable diligence, have discovered it (other than an application by a beneficiary under a trust, which has no limitation period) (article 21 of the English Limitation Act 1980); and
- an action for breach of contract must be commenced within six years of the date of the breach (article 5 of the English Limitation Act 1980).

This is a non-exhaustive list and there are specific limitation periods that apply to other types of claims (eg, employment claims).

Law stated - 2 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Onshore UAE

Pre-action procedures differ across types of disputes. Sending a pre-action letter before commencing proceedings is generally not a legal requirement in the UAE, and it does not impact the applicable limitation period for bringing a claim. The legal concept of 'without prejudice' is not recognised under onshore UAE law, which means that pre-action correspondence relating to settlement could be put before the court. However, certain disputes are subject to mandatory mediation centres or committees. For instance, employment law disputes in the private sector will first need to be referred to the labour department concerned for an attempt at amicable resolution before the case can be referred to court (article 54, the Labour Code).

DIFC

Unlike the English CPR, there are no formal pre-action procedures in the [RDC](#) (including no requirement to send a letter before action, although in practice, parties may choose to do so to ensure that they remain in good standing with the court when it comes to the issue of recovering legal costs at the end of the matter, particularly as the concept of 'without prejudice' is recognised in the DIFC). However, in the spirit of the overriding objective of the RDC, which includes, among other things, trying to save expenses and ensuring that the case is dealt with expeditiously and fairly, in most cases, the court will actively encourage parties to settle their disputes. Further, the DIFC Courts retain general discretion to refer parties to mandatory mediation at any time (see [Practice Note No. 1 of 2021 Referral Of Cases To Mediation](#)).

ADGM

The ADGM Rules does not expressly set out any pre-action rules that parties have to comply with before commencing a claim. However, the ADGM Courts will, in practice, encourage parties to settle their disputes amicably and can, at their own initiative, refer the dispute to court-annexed mediation where they deem it appropriate to do so. Like in the DIFC, the ADGM Courts recognise the concept of 'without prejudice' communications.

Law stated - 2 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

Onshore UAE

Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the [Civil Procedure Code](#)) governs civil procedure in the onshore UAE courts.

To commence civil proceedings, the claimant must file a statement of claim with supporting documents with the court's Case Management Office (CMO), which is responsible for the preparation and management of the proceedings prior to trial (article 45 of the Civil Procedure Code).

The statement of claim must include the details set out at article 44(2) of the Civil Procedure Code. Pursuant to article 47, a claim is considered registered once it is entered into the relevant register by the CMO and proceedings will be considered effective from the date of submission of the statement of claim, which may be done electronically or in hard copy. If issued in hard copy, the claimant is required under article 48(1) of the Civil Procedure Code to provide copies of the statement of claim (with any supporting documents) for any defendant to the claim and for the CMO. Courts in Dubai have a filing fee of 6 per cent of the claim value with a cap of 40,000 dirhams. The position is slightly different in Abu Dhabi, where there is a filing fee of 5 per cent of the claim value with a cap of 40,000 dirhams. In both cases, the filing fee must be paid within three working days of the day following issue of the payment notice. Notice of the statement of claim will be served on the defendant within ten working days of its delivery to the process server (article 49(2) of the Civil Procedure Code), or prior to any hearing if falling within such period. Service will be carried out either by the court bailiff or process server (at the request of a party) or by the party or their legal representatives (with permission of the court) (article 6 of the Civil Procedure Code).

DIFC

In the DIFC, proceedings are treated as commenced on the date the claim form was received by the DIFC Registry (RDC 7.5).

The claimant must file the claim form (using the applicable template form depending on the type of claim) through the DIFC Courts' e-Registry or in person at the Registry together with the filing fee. After a claim form has been issued, it must be served by the claimant on the defendants within the stipulated time periods in RDC 7.20 (four months for service within Dubai and six months for service abroad). Defendants are held to have been notified of the proceedings once the claim form is validly served on them. Filing fees in the DIFC Courts vary depending on the value of the claim.

ADGM

In the ADGM, proceedings are treated as commenced on the date inputted by the Court on the claim form. Defendants are notified of the proceedings through service of the claim form by the claimant. Service within the ADGM must be within four months of the date of issue, and if outside of the ADGM, within six months of the date of issue. For claims in the Small Claims Division, different time periods apply. Filing fees in the ADGM Courts also vary depending on the value of the claim.

Law stated - 2 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Onshore UAE

Civil proceedings in the UAE onshore courts typically run for six to nine months. The litigation timetable in the UAE is primarily court-driven and the CMO will determine the procedure to be followed. The parties have almost no control over the pace at which the matters proceed. The unsuccessful party will typically seek to appeal the judgment.

Following registration of the claim form and the payment of the relevant fee, the court issues a case number and lists a date for the final hearing (which is postponed by the CMO as necessary).

The CMO then typically instructs bailiffs to serve the claim on the defendants. Once validly served, defendants are required to submit their defence within 10 working days from the date of notification of the claim (article 48(2) of the Civil Procedure Code). UAE onshore courts are often assisted by independent court-appointed experts who prepare reports on technical matters. Once the pleadings phase is complete, the court may adjudicate the case, appoint an expert to investigate specific facts in issue or set a hearing to hand down the judgment. As previously mentioned, most cases in onshore UAE will be decided on the basis of the documents only (which includes witness statements and the court-appointed expert report). The judge will rarely order a hearing with oral submissions from the parties (or their legal representatives). All documents put before the onshore courts must be in Arabic (or Arabic translations). All oral statements must also be made in Arabic (with the assistance of an interpreter, if necessary).

DIFC and ADGM

Proceedings in the DIFC and ADGM Courts generally conclude within nine to 24 months, depending on the legal and factual complexity of the claim. The timetable is typically set by the court, with input from the parties, at a Case Management Conference (CMC), which occurs after the close of the pleadings phase.

Proceedings under Part 7 of the RDC (the standard route) are commenced by the filing and service by the claimant of the claim form and the particulars of claim. The defendant has the option to acknowledge service and is required to file its defence. The claimant may file a reply to the defence. A CMC is typically held to decide the subsequent timetable for the conduct of the claim and for a final hearing. This is also an opportunity for parties to make certain applications, including, for example, applications for summary judgment, security for costs and strike out. After the CMC, the evidence phase of the proceedings commences, with disclosure, exchange of witness statements and expert reports to follow before the final hearing is conducted before the Court.

The procedure and timetable in the ADGM resemble that of the DIFC.

In both courts, the language of the proceedings is English and all documents and evidence must be in English or translated into English.

Law stated - 2 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Onshore UAE

Once proceedings have been commenced by the filing of the claim in court, the CMO is responsible for the management of the case before the trial phase. Parties may apply to challenge the court's jurisdiction so long as the matter is still before the CMO and before raising any claim or defence and making an application for the claim to be dismissed (articles 45(8) and 86, Civil Procedure Code). The application to challenge jurisdiction will then be heard by the court.

The UAE Courts will typically not issue anti-suit injunctions nor recognise anti-suits orders issued by foreign courts. Instead, the UAE Courts will apply the rules contained within article 20 of the Civil Procedure Code to independently decide whether it is competent to hear the dispute.

DIFC

A party wishing to challenge the DIFC Courts' jurisdiction can do so within 14 days of filing its acknowledgement of service; otherwise, it will be treated as having accepted the Courts' jurisdiction. There are various possible grounds on which jurisdiction can be challenged, including the existence of a valid arbitration agreement between the parties. The DIFC Courts may decline to take jurisdiction over proceedings if: (1) it falls within the jurisdiction

of the DIFC Courts but the parties have agreed in writing to the jurisdiction of another court; or (2) final judgment has been issued in respect of such claim by any other court and can be enforced within the DIFC.

In a litigation context, where there are any jurisdictional conflicts between the DIFC Courts and any judicial entity of the Emirate of Dubai, this will be resolved by a Judicial Committee established pursuant to [Federal Decree No. \(29\) of 2024](#).

Where there are jurisdictional conflicts between the DIFC Courts and other dispute resolution bodies (including an arbitral tribunal), parties can also seek anti-suit injunctions from the DIFC Courts.

The process for applying for an anti-suit injunction is the same as other applications for injunctions before the DIFC Courts and the relevant procedure is governed by RDC 25. In *Multiplex Constructions LLC v Elemec Electromechanical Contracting LLC* CFI 020/2016, the DIFC Courts for the first time granted an anti-suit injunction restraining a party from pursuing court proceedings in the onshore courts of Dubai, in favour of a DIFC-LCIA arbitration clause before the DIFC-LCIA Arbitration Centre was abolished. Since the abolition of the DIFC-LCIA Arbitration Centre, the DIFC Courts have continued to uphold other DIFC-LCIA arbitration clauses: for example, see *Narciso v Nash* ARB 009/2024.

ADGM

Anti-suit injunctions are available in the ADGM pursuant to the powers under article 41(1) of the ADGM Regulations. The valid grounds for obtaining an anti-suit injunction in the ADGM are determined by the English common law position.

Law stated - 2 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Onshore UAE

As set out in the Civil Procedure Code, once the plaintiff has filed the claim in court, the case will be assigned to the court's CMO until it is allocated to the trial judge. The CMO is responsible for the case management of the matter before the trial phase, including conducting the exchange of pleadings, the disclosure phase and the exchange of expert reports.

Once the CMO receives the case, it will generally proceed to instruct bailiffs to serve the summons or claim on the defendant and fix the next hearing date, which must be held within 15 days of service of the statement of claim. Litigation in the UAE is primarily court driven and the CMO will determine the procedure and timetable to be followed. The parties have almost no control over the pace at which the matters proceed. However, the court can grant adjournments pursuant to a party's request. The court's discretion to grant adjournments is limited by the conditions set out in article 78 of the Civil Procedure Code, which states,

among other things, that only one adjournment can be granted to a party per reason. Since April 2021, the Dubai Court of First Instance has introduced the concept of a pre-trial conference to be conducted before a supervising judge. Such conferences are intended to facilitate discussion of matters that will assist with disposing of the case without delay (eg, settlement and expedited trial procedures).

DIFC and ADGM

The DIFC Courts and the ADGM Courts are responsible for managing cases in furtherance of the overriding objective contained in their rules. Both courts have wide case management powers contained within their rules. For the DIFC Courts, those powers can be found in Part 4 of the RDC: they include, but are not limited to, the power to 'extend or shorten the time for compliance with any Rule, Practice Direction or Court order', 'adjourn or bring forward a hearing' and 'take any other step or make other order for the purpose of managing the case and furthering the overriding objective'.

The ADGM Courts equally have broad powers in relation to case management that are set out in Part 12 of the ADGM Rules. These include powers relating to varying the case management timetable and setting a trial timetable. In contrast to the approach of the UAE onshore courts, the DIFC and ADGM Courts tend to be more flexible and willing to work with parties to determine the best way for the matter to be conducted, including agreeing a procedural timetable with input from the parties.

Law stated - 2 May 2025

Evidence – documents

- 9 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Onshore UAE

There are no general legal duties on parties to preserve documents and other evidence pending trial.

As to disclosure, in onshore UAE Courts, the onus of proof rests on the claimant and there is no requirement to disclose adverse documents. There is no compulsory document production process akin to the standard 'disclosure' procedure in common law jurisdictions, although a party can make specific disclosure requests for documents to be disclosed in limited circumstances, as set out in Federal Decree No. 35/2022, the [Evidence Law](#). For instance, in commercial lawsuits, a party can request that the other party disclose a specific document that: (1) is specified per se or by its type; (2) is related or connected to the commercial transaction or is able to assist with ascertaining facts related to the transaction; and (3) will not violate any trade secrets or any other rights.

DIFC and ADGM

Where it is feared that important evidence might be destroyed or suppressed, parties may seek the detention, custody or preservation of relevant property under RDC 25.1(3)(a) and Rule 71(1)(c)(i) of the ADGM Rules respectively. Rule 71(1)(c)(i) of the ADGM Rules also provides for an order permitting the inspection of the relevant property. To assist the party in possession of a preservation order, RDC 25.1(4) and Rule 71(1)(d) of the ADGM Rules respectively allow a party in possession of that order to enter any land or building for the purposes of carrying it out. Under Rule 71(1)(d) of the ADGM Rules, the party in possession of a preservation order may also enter any real property, with an officer of the court supervising, for the purposes of carrying out that order.

Parties may also apply for a search order, under RDC 25.1(8) and Rule 71(1)(h) of the ADGM Rules, with the purpose of preserving evidence. These applications must be supported by affidavit evidence. Under the court's powers to grant search orders, imaging orders that allow the applicant to take a screenshot of the respondent's electronic evidence may also be available.

Law stated - 2 May 2025

Evidence – privilege

- 10** | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Onshore UAE

Under onshore UAE law, there is no concept of legal privilege as it is understood in common law jurisdictions, and, therefore, privilege is not a lawful basis for a party to refuse disclosure of certain documents.

However, communications between a lawyer and their client are confidential. Under article 45(1) of Federal Law No. 34 of 2022 (the [UAE Advocacy Law](#)), a lawyer is not permitted to reveal a secret confided to them or any information about the cases on which they are instructed, or which comes to their knowledge through their profession, without the client's consent, unless the disclosure is to prevent the perpetration of crime or required by law. In the case of court-ordered disclosure, it is unlikely that the disclosure can be resisted on the basis of confidentiality.

A lawyer may be criminally liable if they disclose confidential information obtained during the course of their services under the Federal Decree-Law No. 31/2021 (the [New Penal Code](#)). Article 432 of the New Penal Code prohibits the disclosure of confidential information by any person who by their profession is entrusted with a secret, with the penalty being not less than one year of incarceration or a fine of not less than 20,000 dirhams.

DIFC and ADGM

There are provisions in the DIFC laws and regulations that provide for obligations that resemble those of the common law concept of privilege.

Practice Direction No. 2 of 2009 of the DIFC Courts' Code of Professional Conduct for Legal Practitioners provides that practitioners are required to keep information communicated to them by their client confidential unless such disclosure is authorised by the client, ordered by the court or required by law. This duty extends to all partners and employees of a practitioner and continues after the practitioner has ceased to act for the client.

Part 25 of the RDC states that, when faced with an order that could result in the disclosure of documents (eg, a search order), a lawyer must advise their clients as to whether they can raise legal professional privilege or the privilege against self-incrimination. However, no provisions elaborate on the scope of the privilege.

Under Part 28 of the RDC, a party can refuse to disclose a document on the basis of privilege under the 'legal or ethical rules determined by the court to be applicable'. 'Privilege' is defined in the rules as 'the right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognized by law'.

Similarly, in the ADGM, there is a duty of confidentiality that is imposed on lawyers. Disclosure is only permitted if it is authorised by the client, ordered by the court or otherwise required by law as provided in the ADGM Courts' Rules of Conduct 2016. Further, Rule 90 of the ADGM Rules states that a party can refuse to allow the other party to inspect a document on the ground of privilege.

Law stated - 2 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Onshore UAE

The Civil Procedure Code provides that, prior to trial, the CMO is responsible for coordinating the exchange of pleadings, documents and expert reports. In practice, although permitted by article 76 of the Evidence Law, there is little, if any, taking and exchange of witness evidence. It is more common for a party to include in a written submission an account of what an individual said (if disputed) rather than for a witness statement to be prepared. The supervising judge can also assign an expert (or panel of experts) at its own initiative to advise on the evidence and any of the disputed issues. Occasionally, experts are appointed (independently or jointly) by the parties.

The Evidence Law contains the rules on adducing evidence prior to trial. There are very few rules on admissibility – such standards of admissibility are generally focused on the authentication of the evidence. There are no rules on privilege or hearsay that might otherwise allow a party to resist the inclusion of certain evidence.

DIFC and ADGM

Both the RDC and the ADGM Rules contain comprehensive rules pertaining to the exchange of witness evidence (RDC Part 29 and ADGM Rules Part 14) and expert reports (RDC Part 31 and ADGM Rules Part 17).

Typically, parties will seek to agree a procedural timetable that will contain dates for the exchange of witness evidence and expert reports, failing which the court will make orders in that regard. The witness statements are important as they will form the basis of the factual evidence that the witness evidence will give. The oral evidence provided during trial is largely limited to responding to questions by the opponent's lawyer (cross-examination), and sometimes a few questions posed by its party's lawyer (re-examination). For expert reports, parties typically appoint their own experts. On some occasions, they may agree to appoint a single joint expert. Expert evidence is restricted to what is reasonably required to resolve the proceedings. It is focussed on technical issues that factual witnesses are unable to address.

Law stated - 2 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Onshore UAE

While the trial judge can at their discretion allow oral witness and expert evidence to be presented, generally, court proceedings tend to be decided entirely on the basis of the written pleadings and documentary evidence (including any court-ordered expert reports). The Court has powers to compel witnesses to give evidence (eg, if a witness fails to appear on two occasions, the witness can be arrested on order of the Court).

DIFC and ADGM

The DIFC Courts and ADGM Courts admit written and oral witness and expert evidence. Typically, witnesses and experts who provide written statements will be expected to attend the trial to be cross-examined on the contents of their statements. However, where the evidence presented by a witness is fairly limited or uncontroversial, it is possible that the witness will not be called to present oral evidence and the court will solely rely on the witness' written evidence.

In the DIFC and the ADGM, a witness summons may be issued by the court. Failure to comply with such summons may result in contempt of court, which typically results in a referral to a prosecuting authority.

Law stated - 2 May 2025

Interim remedies

13 ¹ What interim remedies are available?

Onshore UAE

Search orders and interim injunctions are not available under onshore UAE law. However, to prevent a defendant from dissipating its assets, a claimant may apply to the court for a precautionary attachment order, the effect of which is to seize or attach the defendant's property that is specified in the application in order to preserve it pending judgment. The defendant can still deal with unspecified assets. Attachment orders may also be made over assets that are in the possession of third parties (for example, funds held in bank accounts). For such an order to be made, it must be apparent from the documents submitted to the judge that there is a serious question to be tried.

Article 247 of the Civil Procedure Code provides that a person can apply for a precautionary attachment order in any circumstance in which it is feared that an asset may be lost and a claim may go unsatisfied as a result, for example, where:

- the obligor has no permanent residence in the state;
- the obligee fears that the obligor may abscond, remove or conceal their property; or
- the assets or securities for the debt are at risk of dissipation.

An attachment order must be accompanied with a signed undertaking to indemnify the defendant in the event that the order was obtained on fraudulent grounds.

An application for a precautionary attachment order may be made without notice to the defendant, but it must be followed by a substantive claim filed at court within eight days of the date that the order is made. The substantive claim will address the validity of the precautionary attachment and allow the defendant an opportunity to raise objections. Failure to comply with the court order may lead to fines.

Further, in certain circumstances a travel ban can be imposed on the defendant if the following conditions are satisfied:

- there must be serious reasons to believe that the defendant will flee the country;
- the debt must not be less than 1,000 dirhams where the substantive case has been filed, or 10,000 dirhams where the substantive case has not yet been filed; and
- the debt must be known, due for payment and unconditional, or if for an unspecified amount, the claim must be based on written evidence and accompanied by a guarantee for any damages caused by the travel ban if not rightfully imposed.

These remedies are granted at the court's discretion and the onus of proof is on the applicant to show that the relevant requirements have been duly satisfied. Obtaining an interim remedy in support of foreign proceedings is not straightforward and it is likely that the UAE onshore courts will be sceptical of such a request.

DIFC

The DIFC Courts can grant a number of interim remedies to prevent the dissipation of assets, to require the defendant to give disclosure of their assets or to assist with the preservation of evidence, including interim injunctions, property preservation and

inspection orders, freezing injunctions, search orders and disclosure orders against third parties (eg Norwich).

In *Skatteforvaltningen (The Danish Customs And Tax Administration) v FFA Private Bank (Dubai) Limited* CFI 004/2024, the DIFC Courts also confirmed that the DIFC Courts specifically have the power to issue Norwich in support of foreign proceedings, ordering a DIFC bank to disclose documents related to bank accounts held by the respondent in proceedings before the English and onshore Dubai courts.

The onus is on the applicant to satisfy the requirements stipulated in the relevant court rules and common law tests to be granted the interim remedy.

Until recently, the position in the DIFC was that the DIFC Courts would only grant injunctive relief in support of foreign proceedings where the claimant could establish that the DIFC Courts had jurisdiction over the respondent under a statutory gateway in article 5A of the now repealed Judicial Authority Law (see [Sandra Holdings v Saleh CA 003/2023](#)). This is no longer the case, as per the following.

- Sandra Holdings was recently overturned in [Carmon Reestrutura-engenharia v Antonia Joao Catete Lopes Cuenda \[2024\] DIFC CA 003](#), where the DIFC Courts held it had the power to issue interim remedies in support of its: (1) express jurisdiction to recognise and enforce foreign judgments; and (2) inherent powers to prevent the undermining of its jurisdiction through foreign asset dissipation. While the decision in *Carmon* predates the New DIFC Courts Law, the court's decision predominantly resulted from its interpretation of: (1) certain provisions of the RDC (which have not been amended); and (2) interpretation of the powers set out in article 32 of the old DIFC Courts Law, which are consistent with the powers listed in article 24(D) of the New DIFC Courts Law.
- In any event, the New DIFC Courts Law expressly grants the DIFC Courts jurisdiction to hear and determine applications for interim or precautionary measures related to applications, claims or current or future arbitral proceedings brought outside the DIFC seeking suitable precautionary measures within the DIFC (article 15(4) of the New DIFC Courts Law); and, more broadly.

Both the New DIFC Courts Law and the court's decision in *Carmon* bring the DIFC Courts' position closer to that of the English courts, which can grant injunctions in support of foreign proceedings pursuant to their power under section 25 of the Civil Jurisdiction and Judgments Act 1982, which gives them inherent or wider jurisdiction to do so.

ADGM

Part 10 of the ADGM Rules gives the ADGM Courts the express power to grant any interim remedy needed in the interests of justice, including interim injunctions, interim declarations, orders for the detention, inspection, custody or preservation of property, freezing injunctions and search orders (among others) (article 71(1)). Such interim remedies can be granted at any time (article 72(1)), including before a claim has been made if the matter is urgent or doing so is desirable in the interests of justice (article 72(4)).

Law stated - 2 May 2025

Remedies

14 | What substantive remedies are available?

Onshore UAE

Onshore UAE law recognises the concepts of direct damages, loss of profits and opportunities, consequential damages and moral damages. However, neither punitive or exemplary damages, nor specific performance, are recognised.

In accordance with articles 72 and 84 of the New Commercial Code, interest is payable on commercial obligations at the market rate not exceeding 9 per cent, or the rate stipulated in the contract (provided it is not excessive or punitive). In the case of judgment debts, in the absence of an agreement between the parties, the rate will be set by the court where the case is heard. For instance, from 9 June 2021, pursuant to Resolution No. 1 of 2021 of the Dubai Court of Cassation, the simple interest rate for judgment debts awarded by the Dubai Courts is 5 per cent. The Ras Al Khaimah Court followed the Dubai Court's approach by applying interest at 5 per cent in a 2021 judgment.

DIFC

Under the DIFC Law of Damages and Remedies, the primary substantive remedy for an injured party in contract or tort is damages. The applicable measure of damages in tort is the sum of money required to put the injured party in the same position as they would have been if they had not sustained the wrong plus any other loss caused by the tort. The right to damages can be in conjunction with other remedies. Courts may order punitive damages where the defendant's conduct has been deliberate and particularly egregious or offensive. Article 40(2) of DIFC Law No. 7 of 2005 (the DIFC Law of Damages and Remedies) provides that: 'the Court may in its discretion on application of a claimant, and where warranted in the circumstances, award damages to an aggrieved party in an amount no greater than three times the actual damages where it appears to the Court that the defendant's conduct producing actual damages was deliberate and particularly egregious or offensive'. There are also other remedies available to the claimant, including specific performance, injunctions, rescission and declarations.

In accordance with article 9 of the New DIFC Courts Law, damages under a judgment may carry interest from the date the judgment is entered. Based on [Practice Direction No. 4 of 2017](#), any judgment debt issued by the DIFC Courts from 20 November 2017 will accrue simple interest at the rate of 9 per cent or other rate as the judge may prescribe. RDC 45.26 deals with interest on judgments.

ADGM

The ADGM Courts also have wide powers to award a claimant a range of remedies including damages, injunctions and specific performance. In the absence of any ADGM enactment or precedent on this point, the position on claiming punitive or exemplary damages in the ADGM is as set out in English common law (article 1 of the ADGM

Application of English Law Regulations 2015). However, we anticipate that judgment debtors may seek to challenge such awards against them on public policy grounds. The ADGM Courts also have wide powers to award interest on pre and post judgment debts. Rule 179 of the ADGM Rules deals with interest on judgments.

Law stated - 2 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Onshore UAE

The Civil Procedure Code does not include provisions that require that parties attempt to settle a dispute before commencing court proceedings. However, in certain courts and for certain industries, an alternative resolution process encouraging settlement is mandatory. For instance, all disputes involving: (1) a commonly owned property; (2) debt up to 500,000 dirhams; (3) disputes agreed to be settled before the centre; (4) ratification of settlement agreements; or (5) the appointment of experts prior to initiating proceedings, must be referred to and reviewed by the Dubai Centre for Amicable Dispute Settlement before proceedings can be commenced in the Dubai Courts (Dubai Law No. 18 of 2021, Resolution No. 8 of 2022). Labour disputes in onshore UAE must be lodged with the Ministry of Labour, which requires that parties meet and attempt to resolve their dispute amicably before proceedings can be commenced in court.

Any settlement is usually set out in a written agreement. The agreement will be valid and binding as long as it satisfies all the conditions under the Civil Procedure Code (eg, there must be an offer and acceptance, and an expression of mutual intent). Once the agreement is concluded, the parties can choose to file the agreement in the court where the matter is being heard. The court will then typically issue a judgment stating that the matter has been settled and refer to the settlement agreement – its terms will not be kept confidential. However, if the parties wish for the terms to remain confidential, the claimant in the action can discontinue or withdraw its claim (see article 113, Civil Procedure Code). In this case, all costs of the proceedings will be borne by the claimant according to article 114 of the Civil Procedure Code (although it, of course, remains open for the parties to agree how costs should be shared in the settlement agreement).

The legal concept of 'without prejudice' is not recognised under onshore UAE law. Therefore, any settlement negotiations or discussions can potentially be relied upon as evidence in court.

DIFC

The RDC do not impose mandatory settlement discussions on parties prior to the commencement of proceedings. However, the DIFC Courts encourage parties to settle their disputes amicably in furtherance of the overriding objective and has the powers to adjourn cases to encourage parties to use ADR.

For instance, the New DIFC Courts Law established a new Mediation Centre under the auspices of the DIFC Courts, where signed settlement agreements that are approved by the Mediation Centre can be subject to compulsory enforcement, giving greater certainty to parties who elect to use this method of dispute resolution (article 30(B)(4) of the New DIFC Courts Law).

Further, a party's refusal to participate in settlement discussions is likely to be taken into account by the DIFC Courts when deciding issues of costs at the end of the proceedings. Terms of the settlement may be set out in a (public) consent order that is filed in court, and that discontinues the proceedings. However, should the parties wish to keep the terms of their settlement confidential, they can file an agreed order commonly known as a Tomlin Order. The terms of the settlement agreement will be contained in the Schedule to that Order, which will ensure the confidentiality of those terms. The proceedings will be considered as stayed except for the purpose of enforcing the terms of the Order (see Registrar's Direction No. 4 of 2010 Clarification on Agreed Orders commonly known as Tomlin Orders). It is yet to be seen whether the regime regarding Tomlin Orders will apply ordinarily to settlement agreements approved by the Mediation Centre.

ADGM

The ADGM Rules do not contain specific rules relating to the process of amicable dispute settlement. Any agreement reached between the parties can be recorded in a consent order filed in court. The ADGM Rules do not expressly address the right for parties to file a Tomlin Order keeping the terms of the agreement confidential. However, given that the ADGM Rules were drafted based on the English CPR, it is anticipated that a Tomlin Order could be made by the ADGM Courts upon the parties' request. The ADGM Courts also provide a court-annexed mediation service.

The common law concept of 'without prejudice' is recognised under the laws of the DIFC and ADGM.

Law stated - 2 May 2025

Enforcement

16 | What means of enforcement are available?

The following responses only address the enforcement of judgments in the same jurisdiction as the court that handed down the judgment.

Onshore UAE

To enforce a UAE domestic judgment that is final (not subject to any further appeal), the claimant is required to start execution proceedings in the courts of the relevant Emirate. These are usually the courts of the Emirate that handed down the judgment. The judgment must be final and certified by the execution court. The enforcement process is different if

the judgment needs to be enforced in an Emirate other than the one that handed down the judgment.

The debt must be settled within 15 days. If the debtor fails to do so, a request can be made to the execution judge to enforce the judgment. Usually, a UAE judgment is enforced in the form of an attachment order. The attachment could be to property, stocks, bonds, shares or real estate. Other methods of enforcement may include the blocking of trade licenses (if the judgment debtor is a company), travel bans, bankruptcy proceedings and even imprisonment of the judgment debtor. However, debtors will usually appeal such judgments to achieve delay.

DIFC

In the DIFC, there is no requirement to start an additional process to enforce a judgment – a judgment handed down by the DIFC Courts takes immediate effect from the time it is given or made (subject to any time limits stipulated in the order). There is no separate step in which the judgment must be the subject of an execution order as is the case in onshore UAE (article 30(B)(1) of the New DIFC Courts Law). If the debtor refuses to comply with terms of the order, the judgment creditor can apply to the DIFC Courts for the judgment to be directly enforced in the DIFC by any of the following methods: (1) a charge over a property; (2) attachment of assets; (3) execution against assets; and (4) the appointment of a receiver. A judgment debtor may also be held to be in contempt of court for non-compliance with a judgment against them. There is no fixed standard time for compliance with a court judgment under the rules: this will be determined by the court when handing down the judgment or order.

ADGM

No separate step needs to be taken in the ADGM for a judgment to take effect. If the judgment debtor refuses to comply with the order, the ADGM Courts can order that a judgment be enforced by several different methods including: (1) granting a writ of control to allow the judgment creditor to take control of goods; (2) an attachment of earnings; (3) issuing third-party debt orders; and (4) making orders relating to insolvency procedures (ADGM Courts Practice Direction 10).

Law stated - 2 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Onshore UAE

Onshore UAE court hearings are held in public, although most matters are disposed of without the need for an oral hearing. Many hearings are now held remotely. Court documents are not generally available to the public.

DIFC and ADGM

In the ADGM and the DIFC, court hearings are generally held in public unless the judge decides otherwise. In the DIFC, a hearing can be held in private for a number of reasons, including if the case involves matters relating to national security and/or if it involves confidential information and publicity would damage that confidentiality. Proceedings in relation to arbitration matters are heard confidentially. Most DIFC and ADGM orders and judgments, and some videos of the hearings, are available to the public on their respective websites. The court documents that have been uploaded to the system may be accessed by the public at their request. Virtual hearings in the DIFC are now common and in June 2023, the DIFC Courts issued a Practical Guidance Note that sets out the virtual hearing and bundle protocol for the DIFC Courts. The ADGM has issued a [Protocol for Remote Hearings](#) that highlights that in accordance with section 98 of the ADGM Regulations, all remote hearings will be held in public. The Registry will post a videoconferencing link for the remote hearing on the ADGM Courts' website.

Law stated - 2 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Onshore UAE

The rules regarding the allocation of costs in civil litigation can be found in Chapter 2 of Title 9 of the Civil Procedure Code. The general position is that the loser pays the winner's legal costs, which include legal fees and court or litigation fees as well as other disbursements such as translations. However, decisions on costs allocation are ultimately a matter for the court's discretion: for example, the court can decide that the winning party should still pay some of its own costs if it incurs unnecessary expenses or fails to bring a key document to the attention of its opponent. The court will issue its judgment on costs together with the substantive judgment – there is no separate, independent judgment on costs. Vexatious litigants can be subject to fines under the rules.

However, in practice, it is unlikely that the winning party will recover more than a nominal amount of its legal costs. The court is likely to award a fixed sum of 1,000 dirhams to 2,000 dirhams and will not engage in a detailed assessment of the time costs spent by the party's legal team (as is typically the case in common law jurisdictions). Further, interest on costs is not awarded by the UAE Courts.

There is no procedure to bring a 'security for costs' application under UAE law.

DIFC and ADGM

The general rule in the DIFC and ADGM is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court may use its discretion to make a different order. In doing so, it will have regard to all circumstances, including the conduct of the parties, whether the party succeeded on all or part of their case and whether any party made a settlement offer. If the court has already made a costs order with respect to a specific part of the proceedings or application (eg, defendant's costs in any event), the court will follow this order for that portion of the costs.

The costs will be assessed by the court either immediately or further to a detailed assessment that will happen independently from the main proceedings (usually after the court hands down the substantive judgment). During the detailed assessment procedure, the party entitled to its costs will serve its schedule of costs on the paying party. The paying party will make submissions as to why it thinks it should not pay certain costs (eg, because they were not reasonably incurred). Based on the evidence before it, the court will make an order as to the quantum of costs that the paying party should pay. Interest on costs can be awarded by the court.

A claimant can make a security for costs application against the defendant in the DIFC and ADGM pursuant to Part 25 of the RDC and Part 11 of the ADGM Rules respectively. If the claimant's application is successful, the defendant must put the sum ordered into the court's account. This sum can be released to pay the costs that the defendant may be ordered to pay at the end of the proceedings.

Generally, a successful party can expect to recover 50–70 per cent of its actual legal costs.

Law stated - 2 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

A contingency fee agreement or damages-based agreement is a type of agreement where the lawyer is paid a share of the proceeds of the claim or damages. A conditional fee agreement is a type of agreement whereby, if successful in the claim, the lawyer is paid their fees or an uplift on the fees.

Onshore UAE

Conditional fee arrangements between lawyers and their clients are permitted in onshore UAE. Further, contingency fee agreements are permitted subject to the lawyers being awarded fees that do not exceed 25 per cent of the awarded value (see articles 55 and 49(4) of Decree-Law No. 34 of 2022 regulating the Advocacy and Legal Consultancy Professions). No such restrictions apply to third-party funding, which remains largely unregulated in the region: at present, there are no specific laws regulating the practice

of third-party funding. It follows that a third-party funder can, therefore, take a share of the proceeds or damages received from succeeding in the claim. However, any funding arrangement is subject to an overriding obligation of good faith and a funder is not allowed to charge interest on the amount that is funded in excess of 9 per cent per annum, as is the general rule for all commercial loans (per article 72 of the New Commercial Code).

DIFC

The DIFC Courts Code of Best Legal Professional Practice prohibits contingency fee arrangements whereby a lawyer is compensated in the event of success by a share in the proceeds of the action. Lawyers in the DIFC are not able to represent their clients where they have an interest in the outcome of proceedings and where this could result in a conflict of interest. Rule 8(ii) of the [Mandatory Code of Conduct for Legal Practitioners](#) in the DIFC Courts sets out that practitioners shall not agree to act for a client in any matter before the court if the practitioner's duty to act in the best interests of a client conflicts, or there is significant risk that it may conflict, with the practitioner's or the law firm's own interests in the same or related asset, liability or matter. While the precise scope of this prohibition is unclear, it is unlikely that it would exclude lawyers acting on a conditional or contingency fee basis where they are remunerated solely by way of their incurred hourly fees, or an uplift on those fees.

Historically, the DIFC Courts have recognised the existence of third-party funding arrangements (see [Rafed Al Khorafi and Others v Bank Sarasin-Alpen \(ME\) Ltd and Bank Sara sin & Co Ltd](#)– 21 August 2014 – CFI 026/2009). Third-party funding is permitted in the DIFC subject to compliance with the applicable regulations that can be found in [Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts](#). The Practice Direction requires a party who enters into a third-party funding agreement to notify all other parties to the dispute of this arrangement, although only the identity of the funder needs to be revealed, and not the details of the funding agreement unless ordered by the court. Legal practitioners entering into funding agreements should also be mindful to ensure that they comply with the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts.

ADGM

In the ADGM, there are no restrictions on lawyers entering into contingency or conditional fee agreements. Unlike the DIFC and onshore UAE, there appear to be no restrictions on lawyers entering into damage-based agreements whereby they are remunerated by receiving a percentage of the sum recovered in the litigation.

The ADGM Litigation Funding Rules 2019 contain more detailed obligations and requirements regarding third-party funding. A funder must carry on as a principal business the funding of proceedings to which the funder is not a party and it must have qualifying assets of not less than US\$5 million. The ADGM Regulations provide for detailed formalities regarding the execution of the funding agreement (eg, the agreement has to be in writing and include the scope, amount and timing of fundings).

Across onshore and offshore UAE, there appear to be no restrictions on a party using third-party funding to offset the risks of a claim.

Law stated - 2 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

There are no specific laws or regulations that prohibit after-the-event insurance and any other type of insurance that provides coverage for legal costs. However, they are not commonly used in UAE litigation (in both onshore and offshore proceedings).

Law stated - 2 May 2025

Class action

21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

There is currently no class action regime in either onshore or offshore UAE. However, in both the ADGM and the DIFC, it remains open to claimants to apply for a Group Litigation Order, which would allow the court to deal with multiple claims that have similar/common issues of fact or law to consider (see Part 7 of the ADGM Rules and Part 20 of the RDC respectively). To date, this remains untested.

Law stated - 2 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Onshore UAE

Once a judgment has been delivered by the Court of First Instance, either party can appeal to the Court of Appeal, without permission, on a number of grounds (see Chapter 2 of Title 12, Civil Procedure Code). An appeal must typically be filed within 30 days from the judgment of the Court of First Instance. The available grounds are provided for in article 160, Civil Procedure Code. They include where: (1) the preceding judgment was in violation of the rules of jurisdiction related to public order; (2) there is an invalidity in the judgment or decision; or (3) an invalid procedure was used that affected the judgment or decision or is contrary to an earlier judgment that did not acquire the force of *res judicata*. In such cases, the earlier judgment shall be deemed appealed by the force of law unless it had become final by the time the appeal was filed.

There are also numerous grounds that a party can rely on to request a review of the judgment, including that the opponent committed a fraud that influenced the judgment or

decision and that documents put into evidence were forged (Civil Procedure Code, article 171).

There is a right to further appeal for judgments over 500,000 dirhams (or if the value of the judgment has not been estimated), in the following cases (Civil Procedures Law, article 175):

- the appealed judgment is based on an error of law;
- there is an invalidity in the judgment or in the procedures that affect the decision in the judgment;
- the judgment violates rules on jurisdiction;
- the judgment contradicts a previous judgment that acquired the force of *res judicata* and that was rendered in relation to a dispute between the same parties on the same subject;
- the judgment does not include reasons or is insufficient or ambiguous; or
- the judgment decides on issues not referred to it for determination, or awards relief in excess of what was pleaded.

Any judgment, regardless of value, can be appealed from the Court of Appeal or the Court of First Instance to the Court of Cassation on the basis that the judgment contradicted a previous judgment that acquired the force of *res judicata* and that was rendered pursuant to a dispute between the same parties.

Judgments handed down by the Court of Appeal pursuant to execution procedures cannot be appealed (article 175(3) of the Civil Procedure Code).

Court of Cassation judgments are final and binding and cannot be appealed further as the Court of Cassation is the highest court in the onshore UAE.

DIFC and ADGM

Decisions of the Court of First Instance of the DIFC and the ADGM can only be appealed to the Court of Appeal with permission. The notice of appeal must be filed within the deadline set out in the lower court's judgment or, where there is no such direction, within 21 days of the lower court judgment being handed down. The lower court will initially consider the permission application, but it can also refer it to the Court of Appeal for decision. Similarly, an appeal from the DIFC SCT to the Court of First Instance must first receive permission from the Court of First Instance, and the appeal notice must be filed within 14 days of the relevant decision (RDC 53.89 and 53.107). The court will only grant the applicant permission to appeal where: (1) the appeal has a real prospect of success; or (2) where there is some other compelling reason why the appeal should be heard.

In the DIFC, a judgment can only be appealed if the decision is: (1) wrong; (2) unjust because of a serious procedural or other irregularity in the proceedings; or (3) an error of law.

No specific grounds of appeal are set out in the ADGM Rules. In the ADGM Small Claims Divisions, appeals can only be brought on a question of law (article 205(3) of the ADGM Rules).

Law stated - 2 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

Onshore UAE

The UAE has entered into a number of treaties with other countries that govern the reciprocal enforcement of judgments. The most commonly used in the Middle East is the Riyadh Arab Convention for Judicial Cooperation of 1983 (the Riyadh Convention) for enforcing foreign judgments and awards. The other commonly used treaty is the GCC Convention of 1996, which allows the recognition and enforcement of judgments and awards without any review of the merits. The other signatories to the GCC Convention are Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.

The UAE has also entered into a number of bilateral treaties for enforcement of judgments with, for example, Tunisia, France, India, Egypt, China and Kazakhstan.

In the absence of a treaty for mutual recognition of judgments, there is a need for reciprocity between the UAE and the foreign state issuing the judgment of which recognition and enforcement is sought in the UAE (article 85 of UAE Cabinet Resolution No. 57 of 2018). On 13 September 2022, the UAE Ministry of Justice sent a letter to the Dubai Courts calling for the reciprocal enforcement of judgments of the English courts in the UAE, a step that follows the English High Court's decision in *Lenkor Energy Trading DMCC v Puri* (2020) EWHC 75, in which it was found that a Dubai Court judgment regarding liability for bounced cheques was a final and conclusive judgment of a court of competent jurisdiction.

Since the MoJ's 2022 letter, there has not been any indication from the UAE courts (whether by way of formal announcement or in practice) that it would from now on enforce English court judgments under the principle of reciprocity (set out in article 85). Nevertheless, the English High Court's recent decision to again enforce a Dubai Court judgment in *Emirates NBD Bank PJSC v Rashed Abdulaziz Almkhawi and Others* [2023] EWHC 1113 (Comm) may suffice to demonstrate that *Lenkor* was not a one-off occurrence and persuade the onshore UAE courts that the reciprocity criteria in article 85(1) has now been met such that English court judgments should be enforced in the UAE Courts. The requirements under article 85(2) (eg, that the UAE courts do not have exclusive jurisdiction and that the order is not contrary to public morals) would still need to be satisfied.

In addition to the treaties in respect of enforcement, there are also bilateral treaties that exist in relation to judicial assistance between the UAE and other jurisdictions. For example, there is a treaty between the United Kingdom of Great Britain and Northern Ireland and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters dated 7 December 2006 (the Treaty). The Treaty focuses solely on the service of judicial documents and the taking of evidence by means of letters of request or commissions. Under the Treaty, taking of evidence is deemed to cover the taking of statements and the production, identification or examination of documents, records or samples requested.

DIFC

In principle, the recognition and enforcement of foreign judgments in the DIFC will be the same as for a foreign judgment being enforced in onshore courts, as the DIFC Courts are part of the UAE judicial system. The DIFC, as an economic free zone existing within the territory of the UAE, is not capable of entering into international treaties itself. The DIFC Courts have the power to ratify foreign judgments (article 31(2) of the New DIFC Courts Law) and article 33 of the New DIFC Courts Law makes clear that the DIFC will comply with the terms of a treaty for the mutual enforcement of judgments entered into by the UAE.

The DIFC has also entered into non-binding bilateral memoranda or protocols with foreign courts in relation to the reciprocal enforcement of foreign judgments. For instance, the DIFC Courts and the English Commercial Court have entered into a [memorandum of guidance](#), which sets out the steps required for mutual enforcement of monetary judgments, interim injunctions and freezing orders.

Where no treaty exists, article 31(4) of the New DIFC Courts Law states that a foreign judgment can be enforced according to the rules of the court. The RDC do not specifically address the circumstances in which the DIFC Courts will enforce a foreign judgment in the absence of a treaty or another agreement with a foreign court. It is likely that the DIFC Courts would apply general common law principles and, therefore, will enforce final and conclusive judgments and not require reciprocity between the relevant foreign court (as the case may be) and the DIFC Courts.

Article 32(B) of the New DIFC Courts Law provides that any recognised judgment of the DIFC Courts should be enforceable in onshore Dubai, without any review of the merits. For a number of years, foreign judgment holders seeking to enforce in onshore UAE would bring their judgment for enforcement to the DIFC Courts rather than directly to the onshore courts in order to avoid the perceived uncertainty and unfamiliarity of the onshore enforcement process. This bypassing of the onshore courts gave the DIFC Courts the label of being a 'conduit jurisdiction'. To address this concern, in June 2016, a Joint Judicial Committee was established (pursuant to Federal Decree No. 19 of 2016) to determine issues of conflict of jurisdiction between the DIFC Courts and the Dubai Courts. As a result, there are a range of situations in which the Joint Judicial Committee will require the DIFC Courts or onshore Dubai Courts to stop exercising jurisdiction. On 8 April 2024, the Joint Judicial Committee was replaced by the Judicial Authority for Resolving Jurisdictional Conflicts between DIFC Courts and Judicial Authorities in Dubai. The scope of review afforded to the Judicial Authority is much broader in that it can resolve conflicts between the DIFC Courts and a number of other authorities (not just the Dubai Courts).

ADGM

Chapter 10 of the [ADGM Regulations](#) sets out the rules for the reciprocal recognition and enforcement of foreign judgments and arbitral awards. As in the DIFC Courts, where there is an applicable treaty between the UAE and a foreign jurisdiction for the mutual recognition and enforcement of judgments, the ADGM Courts will comply with its terms. The ADGM has also entered into memoranda of understanding (MoU) with certain courts of foreign jurisdictions (eg, the High Court of Hong Kong and the Federal Court of Australia). MoUs are not binding but show an intent between the courts to collaborate. Where there is no treaty or memorandum, the ADGM Courts follow the civil law approach and require substantial reciprocity of recognition and enforcement for a foreign judgment to be

recognised (see article 171 of the ADGM Regulations). Only final and conclusive judgments will be registered and enforced.

Law stated - 2 May 2025

Foreign proceedings

- 24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Onshore UAE

Requests for evidence from foreign courts will typically occur through diplomatic channels. The UAE has entered into a number of treaties relating to judicial assistance with foreign jurisdictions. For example, the Treaty, which focuses solely on the service of judicial documents and the taking of evidence by means of letters of request or commissions. Under the terms of the Treaty, taking of evidence is deemed to cover the taking of statements and the production, identification or examination of documents, records or samples requested.

DIFC and ADGM

Both the ADGM and the DIFC have specific provisions in their court rules for the collection of evidence for use in foreign court proceedings (see RDC 30.65-67; ADGM Rules 131-134). These procedures appear to have been used in March 2021 when the DIFC Court of First Instance issued a [judgment](#) ordering UAE-based witnesses to be examined by the DIFC Courts pursuant to two letters of request sent by the District Court of the State of Minnesota.

Law stated - 2 May 2025

ARBITRATION

UNCITRAL Model Law

- 25 | Is the arbitration law based on the UNCITRAL Model Law?

The UAE arbitration law is Federal Law No. 6 of 2018 ([the UAE Arbitration Law](#)). It applies to all arbitrations seated in onshore UAE, or otherwise subject to UAE law. Arbitrations seated in the ADGM and the DIFC are subject to separate laws. In the DIFC, arbitral proceedings are governed by the DIFC Arbitration Law No. 1 of 2008 (as amended) ([the DIFC Arbitration Law](#)). In the ADGM, arbitral proceedings are governed by the ADGM Arbitration Regulations of 2015 ([the ADGM Arbitration Regulations](#)). All three statutes are largely modelled on the 1985 UNCITRAL Model Law.

Law stated - 2 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

In both onshore and offshore UAE, arbitration agreements must be recorded in writing (but not necessarily signed), otherwise they will be void (UAE Arbitration Law, article 7(1); DIFC Arbitration Law, article 12; ADGM Arbitration Regulations, article 14(2)). The arbitration agreement can be in the form of an arbitration clause in a contract or in the form of a separate agreement. Arbitration agreements (including arbitration clauses in the main agreement) are considered separate agreements and will not be considered invalid, ineffective or inexistent because the main agreement is invalid.

Law stated - 2 May 2025

Choice of arbitrator

27 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In the absence of any agreement between the parties as to the number of arbitrators and their appointment (whether contained in the arbitration agreement itself or any institutional rules), the position is as follows:

- The UAE Arbitration Law provides that three arbitrators will be appointed (article 9(1)). Each party will appoint one arbitrator, and the two arbitrators appointed will choose the third arbitrator. If a party does not appoint an arbitrator within the prescribed time limit, the arbitration institution administering the arbitration or the Court, as applicable, will appoint the third arbitrator (article 11(3));
- The DIFC Arbitration Law provides that there will be only one arbitrator (article 16(2)). The sole arbitrator shall be appointed jointly by the parties. If the parties are unable to agree on the identity of the sole arbitrator within 30 days of the request, they shall be appointed by the DIFC Court of First Instance (article 16(3)); and
- The ADGM Arbitration Regulations provide for one arbitrator (article 18(2)). The sole arbitrator shall be appointed jointly by the parties. If the parties are unable to agree on the identity of the sole arbitrator within 30 days of the request, they shall be appointed by the arbitral institution administering the arbitration, or, where there is no such institution, the ADGM Court of First Instance (article 19(3)).

Under all three laws, an arbitrator's appointment can only be challenged on the basis of their impartiality or independence or if the arbitrator does not possess the requisite qualifications. Any challenges must be filed within the following timelines:

- under the UAE Arbitration Law, within 15 days after the party became aware of the appointment of the said arbitrator or after becoming aware of the grounds for recusal (article 15(1));
-

under the DIFC Arbitration Law, within 15 days from the constitution of the tribunal or after becoming aware of the grounds for challenging the appointment (article 19(2)); and

- under the ADGM Arbitration Regulations, within 30 days from the constitution of the tribunal or after becoming aware of the grounds for challenging the appointment (article 21(2)).

Law stated - 2 May 2025

Arbitrator options

28 | What are the options when choosing an arbitrator or arbitrators?

The relevant statutes do not restrict parties from appointing who they wish as arbitrators (provided they are independent). Both the DIFC Arbitration Law and the ADGM Arbitration Regulations expressly state that an arbitrator shall not be excluded because of their nationality (unless this was agreed between the parties). The UAE Arbitration Law goes one step further and states that an arbitrator cannot be precluded from being appointed because of their gender or nationality (except if agreed between the parties). However, unless certain strict conditions are satisfied, members of the Executive Management of an arbitral institution cannot act as arbitrators in cases administered by that same institution (UAE Arbitration Law, article 10-bis). Generally, arbitrators do not need to be affiliated with any local institution to be appointed by the parties.

There is a significant pool of arbitrators for parties to choose from in the UAE. In addition to UAE based local and expatriate lawyers, many former court judges and UK barristers now accept arbitral appointments in the UAE. Arbitration in the UAE is made even more appealing by the availability of arbitrators who come from not only common law jurisdictions, but also civil law jurisdictions, and who can speak a number of different languages to suit the needs of complex, cross-border arbitration.

Law stated - 2 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The UAE Arbitration Law provides that the parties are free to choose the procedure to be followed in the arbitration. If the parties are unable to agree on certain aspects of the procedure, the tribunal will be responsible for making appropriate orders as to the conduct of the proceedings, as long as they do not contravene the applicable laws, and the basic principles of dispute resolution and international agreements to which the UAE is a party (article 23). The DIFC and the ADGM laws contain similar provisions to that effect, and also specify the power conferred upon the tribunal to determine 'the admissibility, relevance, materiality, and weight of any evidence' (DIFC Arbitration Law, article 26(2);

ADGM Arbitration Regulations, article 34(3)). All three statutes provide that each party needs to be given the full opportunity to present its case.

Law stated - 2 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

The onshore courts can intervene in certain circumstances to support UAE-seated arbitrations. For example, pursuant to article 18(2) of the UAE Arbitration Law, the courts can make orders for interim or precautionary measures, as they deem necessary. The UAE Courts can also assist with the constitution of the arbitral tribunal if parties are unable to agree on their appointment (article 11 of the UAE Arbitration Law). Generally, the parties are unable to opt out of elements of court support/supervision by agreement unless expressly specified in the law.

The DIFC Arbitration Law and the ADGM Arbitration Regulations expressly provide that the court's intervention is limited to what is provided for in the law (articles 10 and 12 respectively). The DIFC Courts and the ADGM Courts can intervene on a number of grounds provided in the law, including to order interim measures in support of locally seated arbitrations, stay legal proceedings, and provide assistance in taking evidence. The court's powers cannot be curtailed except as expressly set out in the relevant laws.

Law stated - 2 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Yes, unless otherwise agreed by the parties, arbitrators have the power, at the request of a party, to grant interim or precautionary measures provided that any such request by a party is notified to the other parties (UAE Arbitration Law, article 21; DIFC Arbitration Law article 24; ADGM Arbitration Regulations article 28). The courts also have these same powers but only to the extent that they have jurisdiction in relation to the measure at hand. The onshore Courts have general jurisdiction in this respect (ie, they can support both UAE and foreign-seated arbitrations). However, the ADGM Courts and the DIFC Courts can only make orders for interim measures in support of arbitrations under their supervisory jurisdiction where the seat is ADGM/DIFC respectively.

Interim measures can be ordered to:

- maintain or restore the status quo pending the determination of the dispute;
- preserve assets to facilitate enforcement;
- take action to prevent something that would cause harm or prejudice to a party or the arbitration process; and/or

- preserve evidence that may be material and relevant to the dispute.

Some institutional rules also provide the tribunal with powers to make orders relating to interim measures. For example, the new [rules](#) of the Abu Dhabi International Arbitration Centre provide that a party can request the tribunal to provide 'preliminary measures' it considers appropriate (preliminary measures are any interim, preliminary, provisional or precautionary measures) (article 34). The rules also provide for the appointment of an emergency arbitrator to allow the parties to obtain urgent interim relief prior to the constitution of the tribunal to help preserve their rights or to prevent irreparable harm (article 35).

Law stated - 2 May 2025

Award

32 | When and in what form must the award be delivered?

Under all three statutes (ie, those of the onshore UAE, DIFC and ADGM), the award must be delivered in writing.

Under the UAE Arbitration Law, the award must be: (1) signed by the sole arbitrator, or if there is more than one, the majority of the members of the tribunal; (2) be justified; (3) mention the names of the parties, their addresses, the names of the arbitrators, their nationality and addresses, and a summary of the claims, statements, documents and the operative part of the award; (4) and include the date and place of issuance of the award. The final award must be handed down within the time limit agreed by the parties. If there is no such agreement, the award must be rendered within six months from the date of the final hearing of the proceedings (not including any interim hearing or case management conference that may be held). This deadline can be extended by up to six months by the tribunal, unless otherwise agreed by the parties (article 42).

Under the DIFC Arbitration Law, the award can be signed by a majority of the arbitrators, provided the reason for any omitted signature is stated. Unless otherwise agreed between the parties, the award must state the reasons upon which it is based. It must also include its date and the seat of the arbitration and fix the costs of the arbitration (article 38). There is no specific timeline imposed for the delivery of the award.

Under the ADGM Arbitration Regulations, the award must state the reasons upon which it is based, its date and the seat of the arbitration, and fix the costs of the arbitration (article 55). It is not expressly clear whether the award needs to be signed by all the members, or just a majority. However, an award from a tribunal consisting of more than one arbitrator can be made, unless otherwise agreed, by a majority of its members (article 50). There is no specific timeline imposed for the delivery of the award.

Law stated - 2 May 2025

Appeal or challenge

33 On what grounds can an award be appealed or challenged in the courts?

Onshore UAE

An award issued under the UAE Arbitration Law can be challenged on limited grounds before the local or federal Court of Appeal, which has jurisdiction to supervise onshore UAE seated arbitrations. The grounds are set out in Article 53, UAE Arbitration Law:

- there was no arbitration agreement, or such agreement was null, void or forfeited;
- a party did not have capacity to enter into the arbitration agreement;
- a party did not have legal capacity to enter into the arbitration in accordance with the requirements of article 4 of the UAE Arbitration Law;
- a party was unable to submit their defence as a result of not being given proper notice of the appointment of the tribunal or of the arbitration proceeding, or the failure of the tribunal to comply with the principles of litigation or any other reason outside their control;
- the tribunal did not apply the substantive law agreed between the parties;
- the constitution of the tribunal or the appointment of one of the arbitrators was not carried out in accordance with the applicable law or the parties' agreement in that regard;
- the arbitration proceedings are invalid to the effect that it impairs the award, or the award was rendered after the applicable time limit; and
- the award deals with matters outside the scope of what was agreed between the parties in the arbitration agreement. If the award can be severed to include only the matters that fall within the scope of the award, then only the other parts are held void.

The court will, on its own accord, annul the award if: (1) the subject matter of the dispute cannot be settled by way of arbitration; or (2) the award violates UAE public policy (article 53).

The application to challenge the award must be brought within 30 days of the award being notified to the applicant (article 54). The Court of Appeal's judgment can only be appealed to the Court of Cassation. The Court of Appeal can stay the proceedings to challenge the award to allow the tribunal time to make appropriate corrections to the award.

DIFC and ADGM

Under the DIFC Arbitration Law and ADGM Arbitration Regulations, an application to set aside an award can be brought on the following grounds:

- a party did not have capacity to enter into the arbitration agreement, or the agreement is not valid under its law;
- a party was unable to present its case or was not given proper notice of the appointment of an arbitrator or of the arbitration proceeding;
- the award deals with matters outside the scope of what was agreed between the parties in the arbitration agreement, or the award considered issues that were not

submitted to arbitration. If the award can be severed to include only the matters that fall within the scope of the arbitration, then only the out of scope parts are held void; or

- the tribunal was not constituted or the arbitral proceedings were not conducted in accordance with the parties' agreement, unless the agreement was in contravention of the law.

The DIFC Courts and the ADGM Courts can set aside an award, on their own accord (without an application from a party), if they find that the subject matter of the dispute cannot be settled by way of arbitration or the award violates UAE public policy.

The DIFC Courts can also set aside an award if it finds, on its own accord, that the dispute was referred to a different body or tribunal for resolution.

The deadline for bringing such a challenge is three months from the date the party making the application has received the award, or as otherwise agreed between the parties.

Law stated - 2 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

Domestic arbitral awards

Onshore UAE

Articles 52–57 of the UAE Arbitration Law govern the recognition and enforcement of domestic arbitral awards in onshore UAE. As a first step, before the award can be enforced, it has to be ratified by a UAE Court of Appeal (federal or local), which will issue an enforcement order. To do so, a number of documents listed at article 55 of the UAE Arbitration Law have to be provided. Once the application has been submitted, the recognition and enforcement of the award will be issued within 60 days from filing, unless the application is opposed on the basis of one of the grounds for annulment under article 53. The decision of the court on the application to refuse enforcement can be appealed to Court of Cassation within 30 days (article 54). When the decision is appealed to the Court of Cassation, the entire process of obtaining the enforcement order can take more than a year.

DIFC

Part 4 of the DIFC Arbitration Law addresses the recognition and enforcement of awards in the DIFC. Under Part 4, an arbitral award will be recognised as binding within the DIFC as soon as it has been ratified by the DIFC Courts. Under article 44, the grounds for refusing recognition or enforcement of the award are the same grounds as those for challenging the award after it was rendered under article 41 (with the exception that it cannot be refused

on the basis that the dispute was referred to another body or tribunal). Enforcement can be refused on the basis that the award has not yet become binding on the parties or has been set aside by a court of the state or the jurisdiction in, or under the law of which, the award was made. The New DIFC Courts Law clarifies that arbitral awards ratified by the DIFC Courts are subject to the compulsory enforcement regime of the DIFC Courts, meaning that an award creditor will not need to commence separate enforcement proceedings (article 30(B)(2)).

ADGM

The procedure for enforcement of domestic awards is governed by Part 4 of the ADGM Arbitration Regulations and is similar to the procedure for the DIFC. The award can be enforced in the ADGM once it has been ratified by the ADGM Courts.

Foreign arbitral awards

A foreign arbitral award should be generally enforced in a relatively straightforward manner in the UAE. Since August 2006, the UAE has been a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) without reservation, which means that, in theory, the UAE (including the ADGM and the DIFC) should enforce awards issued in countries that are also signatories, but also those issued in countries that are not. In practice, the onshore courts have shown themselves reluctant to do so for countries that are not signatories. The UAE Courts can only refuse enforcement on limited grounds (eg, public policy) that are not in violation of the New York Convention.

The UAE has entered into a number of treaties with other countries that govern, amongst other issues, the reciprocal enforcement of awards. The most commonly used in the Middle East are the Riyadh Convention and the GCC Convention of 1996.

Onshore UAE

The recognition and enforcement procedure set out in the UAE Arbitration Law does not apply to the enforcement of foreign arbitral awards in onshore UAE. Instead, articles 85 and 86 of the UAE Cabinet Resolution No. 57 of 2018 Concerning the UAE Civil Procedure Law (the [Civil Procedure Regulations](#)) apply. While, in theory, by virtue of the UAE being a signatory to the New York Convention, the onshore courts should only be able to refuse enforcement on specific grounds listed in article V of the New York Convention (article 88 of the Civil Procedure Regulations), the onshore courts have generally maintained the position that the strict provisions regarding enforcement set out in the Civil Procedure Regulations still apply (eg, *Carnival SG PTE Ltd v Elan Qatar WLL* (Appeal No. 790/2022, Commercial Cassation)).

DIFC

As stated above, where the UAE has entered into treaties providing for the mutual enforcement of awards, the DIFC Courts are bound to comply with the terms of such

a treaty. Therefore, the DIFC Courts are bound to respect the terms of the New York Convention.

Otherwise, the procedure set out in Part 4 of the DIFC Arbitration Law, which also applies to the enforcement of domestic awards, should be complied with. As set out above, under Part 4, an arbitral award will be recognised as binding within the DIFC as soon as it has been ratified by the DIFC Courts. The grounds for refusing enforcement are the same as when dealing with domestic awards.

As a result of the DIFC having a streamlined procedure making the recognition and enforcement of awards potentially more straightforward than in onshore UAE, claimants have attempted to use the DIFC as a 'conduit jurisdiction' to enforce DIFC ratified awards in onshore UAE, regardless of the nexus to the DIFC. To address this concern, in June 2016, a Joint Judicial Committee was established (pursuant to Federal Decree No. 19 of 2016). On 8 April 2024, the Joint Judicial Committee was replaced by the Judicial Authority for Resolving Jurisdictional Conflicts between DIFC Courts and Judicial Authorities in Dubai.

ADGM

Unless there is a binding treaty or cooperation agreement that applies, the procedure for enforcement of foreign awards is governed by Part 4 of the ADGM Arbitration Regulations and is the same as the procedure for enforcing domestic awards. The award can be enforced in the ADGM once it has been ratified by the ADGM Courts.

Law stated - 2 May 2025

Costs

35 | Can a successful party recover its costs?

Onshore UAE

Article 46 of the UAE Arbitration Law provides that the tribunal shall assess the costs of the arbitration, including the fees and expenses of the tribunal and the costs of appointment of experts by the tribunal. There is no express mention that the tribunal can order that the losing party pay the successful party's legal costs or fees. Therefore, it is best practice to ensure the arbitral rules that are incorporated expressly provide the tribunal with this power, or for parties to agree in writing that the tribunal shall have these powers (either in the arbitration agreement or at the start of the arbitration).

In a 2023 decision of the Dubai Court of Cassation (Commercial Case No.821/2023), it was held that an ICC tribunal's authority to award costs and expenses extended only to its own costs and those of the tribunal-appointed experts. Accordingly, the 'offending' part of the award (ie, the part of the award related to legal fees) was annulled. This was on the basis of a narrow interpretation of article 46 of the UAE Arbitration Law and the applicable ICC Rules – both of which were held to not explicitly provide for the recovery of the legal fees (although both provisions include a non-exhaustive list of recoverable arbitration expenses). These controversial findings were criticised by arbitration practitioners, on the basis that the court

allegedly reached a wrong interpretation of the UAE Arbitration Law and ICC Rules. In a more recent decision (Case No. 756/2024), the Dubai Court of Cassation appears to have restored the recoverability of legal costs in respect of ICC arbitration, finding that the ICC Rules expressly refer to 'the reasonable legal and other costs incurred by the parties' in the definition of 'arbitration costs'. However, as there is no system of binding precedent in the UAE, it remains possible that the Court could quash future costs awards, whether awarded in ICC arbitration or under the rules of any other arbitral institution

Third-party funding costs refer to the funder's return on investment (a 'success fee' or 'funding premium'), which may form part of a funder's entitlement if the funded party succeeds. The UAE Arbitration Law is equally silent as to the recovery of third-party funding costs. We are not aware of any UAE authority that has discussed the recovery of third-party funding costs but given the uncertain position on the enforcement of awards for legal fees in the Dubai Courts, those who wish to seek recovery of third-party funding costs should put in place a clear agreement between the parties to that effect.

DIFC and ADGM

Both the ADGM Arbitration Regulations and the DIFC Arbitration Law provide that the tribunal shall fix the costs of the arbitration in its award (articles 55 and 38). The costs that can be recovered expressly include:

- the tribunal's fees;
- travel and other expenses incurred by the arbitrators;
- costs of expert advice;
- travel and other expenses of witnesses;
- costs of the conduct of the arbitration;
- costs of the legal representation of the successful party if claimed during the arbitration;
- costs of any party-appointed experts if claimed during the arbitration; and
- fees and expenses of any arbitration institution or appointing authority.

The ADGM Arbitration Regulations are more detailed in respect of the recovery of costs. They expressly state that in fixing the costs, the tribunal may direct to whom, by whom, and in what manner, the whole or any part of the costs shall be paid. If the tribunal does not fix the costs in the award, a party can apply to the tribunal within 30 days of receiving the award for a further award on costs. Only reasonable and proportionate costs can be recovered.

Law stated - 2 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

Historically, ADR has not been commonly used by parties in the UAE to resolve commercial disputes, in part, because the concept of 'without prejudice' is not recognised under UAE law, making parties reluctant to make offers that could be used as evidence in court. The issuance of Federal Law No. 6 of 2021 on Mediation for the Settlement of Civil and Commercial Disputes (the Mediation Law) (recently replaced by Federal Decree-Law No. 40 of 2023 on Mediation and Conciliation in Civil and Commercial Disputes (the New Mediation Law)) heralded a new era for mediation in the UAE. This move towards mediation aligns with the UAE's commitment to signing the Singapore Convention on Mediation, announced in March 2022. Notably, the Mediation Law set out that mediations were to be conducted confidentially and that any agreements (except the Settlement Agreement) or concessions made by parties through the mediation process could not be used before any court, without the other parties' approval, thereby giving parties the comfort to meaningfully engage in the mediation without fear that it would be held against them at a later stage in court. Further, under the New Mediation Law, mediation and conciliation centres may be established by the Federal Judicial Council or chairman of the local judicial authority within the territorial jurisdiction of the first-instance courts. The New DIFC Courts Law aims to further popularise mediation by establishing a new Mediation Centre under the auspices of the DIFC Courts and gives certainty to parties seeking mediation by making signed settlement agreements approved by the Mediation Centre subject to compulsory enforcement in the DIFC. Online platforms providing mediation and conciliation services can also now be established: the ADGM recently announced the launch of its 'mediation in the metaverse' initiative.

Some industries and courts have set specific ADR processes. There are also trends emerging in the ADR processes adopted in some industries. For instance, adjudication has become increasingly popular for resolving construction disputes in the UAE. This can be attributed to the minimal disruption the adjudication process has on ongoing construction projects, as well as benefits in terms of saving costs and dealing with a dispute efficiently. In January 2024, the UAE Ministry of Finance held a forum titled 'Towards Cooperative Dispute Resolution Environment', which aimed to encourage the adoption of ADR to resolve financial disputes. While mediation was the primary focus of the discussion, it is reflective of the UAE's efforts to promote and normalise the use of ADR more broadly.

Law stated - 2 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Subject to any contractual agreement between the parties, there is generally no requirement for parties to consider ADR before commencing proceedings. However, certain types of disputes must be referred to conciliation before the case can be referred to court, such as employment law disputes in the private sector. Furthermore, the local courts of certain Emirates also mandate that parties go through the conciliation process. For instance, all matters involving: (1) a commonly owned property; (2) debt up to 500,000 dirhams; or (3) disputes agreed to be settled before the centre, must be referred to and

reviewed by the Dubai Centre for Amicable Resolution of Dispute before proceedings can be commenced in the Dubai Courts.

For commercial disputes, participation in ADR processes is primarily voluntary. Under the New Mediation Law, the courts have the power to refer disputes to mediation at any stage of the case, provided the parties consent. The UAE legislative framework also contains provisions that assist parties seeking alternative means of resolving disputes once proceedings have started. Article 103, under the Federal Decree-Law No. 42 of 2022 on the Promulgation of the Civil Procedure Law, allows parties to stay court proceedings for a maximum of six months while they work to settle disputes.

In the DIFC, while parties are generally not required to consider ADR prior to commencing proceedings, the overriding objective of the courts encourages parties to consider ADR before commencing court proceedings. If they fail to do so, this can be taken into account by the court when assessing costs at the end of the dispute (RDC 38.3). RDC Part 27 provides that judges may encourage parties to make use of the ADR procedures under Part 27 at any point in a dispute where it is appropriate.

The position in the ADGM differs. Prior to the commencement of court proceedings in the ADGM, there is an expectation that parties will have considered mediation to settle disputes. The ADGM Courts provide court-annexed mediation, a mediation service for parties under Part 36 of the ADGM Rules. Under Part 36 of the ADGM Rules, disputes may be referred to court-annexed mediation in two ways:

- voluntarily by agreement of the parties to a dispute prior to the commencement of proceedings; or
- by an order of the court where it deems such order appropriate.

While disputes will typically be referred to court-annexed mediation at the first case management conference, the court has discretion to make a referral at a later stage if there is a compelling reason to do so.

Law stated - 2 May 2025

MISCELLANEOUS

Interesting features

38 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The New DIFC Courts Law has introduced new jurisdictional gateways through which the DIFC Courts may take jurisdiction over a claim, those being:

- employment claims and applications arising from or related to contracts concluded, completed or performed (partially or wholly) in the DIFC;
- employment claims and applications arising out of or related to any incident or transaction relevant to the DIFC's bodies and DIFC-registered establishments; and
-

claims and applications arising out of or related to trust instruments established or registered in the DIFC and non-Muslim wills that are registered with the DIFC Courts; and

- claims and applications over which the DIFC Courts have jurisdiction under any international treaty or convention to which the UAE has acceded or is a party.

Law stated - 2 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Enactment of the New DIFC Courts Law

The New DIFC Courts Law came into effect on 13 March 2025, repealing the Judicial Authority Law and the DIFC Courts Law.

Under the New DIFC Courts Law, the DIFC Courts now explicitly have jurisdiction over employment claims, trust instruments established or registered under the DIFC. The law also clarifies previous ambiguity regarding whether the DIFC Courts were a 'court of the UAE', and specifies that one of the jurisdictional gateways is claims over which the DIFC Courts have jurisdiction under international treaties to which the UAE is a party.

The circumstances in which a person may be in contempt of court have also been expanded, which now includes the failure to comply with decisions of the DIFC Courts.

Importantly, the New DIFC Courts Law introduces a compulsory enforcement regime that is permitted only under an enforcement writ. Enforcement writs include DIFC Courts' decisions, arbitral awards and settlement agreements ratified by the DIFC Courts and signed settlement agreements approved by the Mediation Centre (which is newly created pursuant to this law).

Norwich in the DIFC

In the DIFC case of *Skatteforvaltningen (The Danish Customs And Tax Administration) v FFA Private Bank (Dubai) Limited* (SKAT Litigation), the DIFC Courts confirmed that it was permitted to, and there was no rule preventing it from exercising its discretion to, grant Norwich in support of foreign court proceedings. In doing so, the DIFC Courts clarified that the jurisdiction of the DIFC Courts is based on UAE statutes rather than English common law or English statutes. On that basis, the DIFC Courts are given a broad statutory discretion to grant such an order, and this discretion is not fettered by English law.

Memorandum of Understanding between Dubai Courts and ADGM Courts

On 14 January 2025, the Dubai Courts and the ADGM Courts entered into a [Memorandum of Understanding](#) (MoU) regarding the reciprocal enforcement of judgments, simplifying the procedure for the recognition of judgments between the two jurisdictions. Pursuant to the MoU, when seeking to enforce a judgment of one court in the other, the court being asked to enforce the judgment may not examine the judgment on its merits and must execute the judgment as long as the procedure and formalities set out in the MoU are followed.

Consequently, a judgment creditor can either: (1) apply directly to the enforcement division of the relevant court being asked to enforce; or (2) follow a 'deputisation' process in which the enforcement judge of the court that issued the judgment will deputise an enforcement judge in the court that is being asked to enforce. Consequently, the MoU disposes of the step in the previous regime requiring the judgment creditor to refer the judgment to the onshore Abu Dhabi Courts.

The MoU defines 'judgment' very broadly, and includes all final judgments, memoranda of composition and arbitral awards ratified by the ADGM or Dubai Courts. Consequently, parties to arbitral proceedings seated in the ADGM will find their awards easier to enforce in the Dubai Courts.

Notably, the MoU is non-binding, but is expected to be followed by both courts, particularly considering that similar MoUs are in place between various UAE national courts and with certain foreign courts.

Law stated - 2 May 2025



Stuart Paterson
Jason Han
Tania Forichon
Sam Hunt
Wajih Jaroudi

stuart.paterson@hsf.com
jason.han@hsf.com
tania.forichon@hsf.com
sam.hunt@hsf.com
wajih.jaroudi@hsf.com

Herbert Smith Freehills Kramer LLP

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[Jonathan Speed](#), [Louise Lanzkron](#)

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LITIGATION

Court system

1 | What is the structure of the civil court system?

High-value (generally more than £100,000) and cases of legal importance are dealt with at first instance in the High Court. The High Court is split into three divisions: the King's Bench Division, the Chancery Division and the Family Division. The King's Bench division primarily handles contract and tort claims while the Chancery Division deals with claims involving land, mortgages, execution of trusts, administration of estates, partnerships and deeds, corporate and personal insolvency disputes and companies work, as well as with some contractual claims (there is some overlap with the King's Bench Division in respect of contractual claims). The Business and Property Courts were created as part of the High Court to provide an umbrella structure to other specialist courts such as the Commercial Court and the Technology and Construction Court.

In addition to the specialist courts, there are also special Lists within the High Court to handle particular types of claims. The Media List is a specialist list of the High Court and belongs to the King's Bench Division. It handles claims such as defamation, breach of privacy, and claims under the Data Protection Act, whereas the Financial List is a dedicated cross-jurisdictional list within the Business and Property Courts of the High Court of Justice. It operates as a joint initiative between the Chancery Division and the Commercial Court. It is set up to deal with claims related to the financial markets and handles cases that typically involve more than £50 million, need expert judicial knowledge of financial markets or pose important issues for the financial sector.

Lower value (typically under £100,000) and less complex civil cases typically begin in the County Courts, with the option to appeal decisions to the High Court. The Civil Division of the Court of Appeal reviews cases from the High Court's divisions and specialist courts, and occasionally from the County Courts, with a panel of three judges presiding. The Supreme Court, as the ultimate appellate court, hears cases of the greatest public or constitutional importance affecting the whole population. Twelve judges sit on the Supreme Court, and they decide cases in panels of five (or very rarely, for cases of major importance, seven). The Judicial Committee of the Privy Council, which consists of the justices of the Supreme Court and some senior Commonwealth judges, is a final court of appeal for several Commonwealth countries, as well as the United Kingdom's overseas territories, Crown dependencies and military sovereign bases.

Additionally, there are specialist tribunals and courts such as The Competition and Appeal Tribunal (CAT), the Intellectual Property Enterprise Court and the Employment Appeal Tribunal, which handle legal issues related to specific types of competition, IP and employment claims, respectively.

Depending on the type and value of the claim, the [Civil Procedure Rules](#) (CPR) determine which court should handle it. The civil court system has begun to move some operations online. For example claims in the High Court are issued electronically through the [C E File system](#) and in cases where the amount in dispute is a money only claim for less than £100,000 claims can be started using the [Money Claim Online \(MCOL\)](#) portal.

Recommendations made by Lord Briggs in his 2016 report suggesting that an online court system should be created are starting to be realised, with two pilots in the County Court for Online Civil Money Claims and the Damages Claims Portal. In addition, the [Judicial Review and Courts Act 2022](#) created a framework for Online Procedure Rules and an [Online Procedure Rules Committee](#) (OPRC) that has already met.

Law stated - 21 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In England and Wales, the legal system is based on the common law and is adversarial, with the onus on the parties to argue their case. The judge's role is primarily to assess the facts presented by the parties and apply the law set out either in statute or previous case law. Judges are required to interpret the law with reference to precedent, which means that a judge should follow previous cases decided on similar facts and points of law.

Civil cases usually do not involve juries, except in some cases of libel, slander, false imprisonment, malicious prosecution or fraud, where a jury trial may be allowed. Jurors, comprising 12 citizens, are randomly selected from the electoral register, and serving on a jury is a mandatory civic duty.

Judges are selected via The Judicial Appointments Commission (JAC), which is an independent commission that selects candidates for judicial office in courts and tribunals. Vacancies are advertised on the JAC [website](#). Judicial diversity is an important goal and the JAC is involved in its promotion. D&I statistics from 2023 show a positive trend, with equal representation of women in legal judicial selection and an increase in ethnic minority representation.

Law stated - 21 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods are governed by the Limitation Act 1980.

Common types of claim	When claim accrues	Limitation period	Notes
Contract	Accrual of cause of action (usually date of breach of contract)	6 years	
Tort		6 years	

	Accrual of cause of action (usually date of damage)		Some torts are actioned without proof of damage (for example, trespass or public nuisance)
Libel	Date of publication	1 year	
Personal injury	Date of injury or date of knowledge of the person injured	3 years	
Enforcement of a judgment	Date when judgment becomes enforceable	6 years	Relates to a 'fresh' action on a judgment not in relation to enforcement proceedings
Deed	Breach of obligation contained in a deed	12 years	

Where a claim has been concealed by a defendant, or where the action is based on the alleged fraud of the defendant, the limitation period does not start to run until the fraud or concealment is discovered or could have been discovered with reasonable diligence.

Limitation can only be extended in certain circumstances. For example, parties can agree to suspend the limitation period by entering into a standstill agreement through which parties can mutually extend or suspend the limitation period. This must be drafted carefully and legal advice should be sought regarding its efficacy.

It is possible for a party to bring a claim after the limitation period has expired; however, this will give the defendant a chance to raise limitation as a complete defence.

Law stated - 21 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Before starting a claim, a party must consider the rules governing pre-action conduct. These are contained in the Pre-Action Protocols (PAPs), which accompany the CPR. The [Practice Direction on Pre-action Conduct and Protocols](#) (Pre-action PD) applies to all types of claims, subject to a few limited exceptions. There are additional PAPs that apply to

pre-action conduct in specific types of claims. The required steps depend on which PAP applies. There are PAPs for claims relating to personal injury, real estate, professional negligence, claims relating to media and communications, and debt claims, among others. For a complete list see [here](#).

The PAPs require parties to exchange information and documentation setting out their respective positions with a view to narrowing down disputed issues and settling claims and to consider some form of alternative dispute resolution (ADR) before proceedings are commenced. There can be serious consequences if one or both parties fail to comply with the Pre-action PD or specific PAP relevant to the claim. Where there has been non-compliance, the court may order that the proceedings are stayed while steps are taken to comply with the PAP or sanctions can be applied, which may include that the party at fault pays the costs of the proceedings or part of the proceedings.

In August 2023, the Civil Justice Council (CJC) produced a [report](#) reviewing the efficacy of PAPs and whether they were suitable for the digital age. The report examined the potential benefits of digitalising pre-action processes, and the place and content of the Pre-action PD. For disputes currently subject to the Pre-action PD, the report recommended there should be a new General Pre action Protocol as a PD to CPR Part 1 and a new PAP for small claims worth £500 or less. The report sets out what the new General PAP should require of the parties. A second reporting phase focused on reforms to the existing PAPs and whether any new ones should be created such as for high value commercial claims. The Civil Procedure Rule Committee must now decide how to implement the reports and shape the future approach to pre-action protocols.

There are several court applications that parties can make prior to the issue of a claim to help formulate their cause of action. These include pre-action disclosure under CPR 31.16 (and PD 57AD if the claim will be issued in the Business and Property Courts) and an application for a *Norwich Pharmacal* order. A claimant may apply for a *Norwich Pharmacal* if they need to obtain information from a third party who is involved in or has facilitated wrongdoing that is the subject of the claim but is not necessarily liable for it. For example, a claimant may seek to identify the anonymous author of a defamatory online post by requesting the disclosure of the author's IP address from the website operator. Once disclosed, the claimant will then know the identity of the defendant.

Law stated - 21 May 2025

Starting proceedings

- 5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

The rules for starting civil proceedings are laid out in Parts 7 and 8 of the CPR. Part 7 is used for starting most types of claims, especially those that involve a dispute of fact or require a trial to resolve. Part 8 claims are suitable for cases where the claimant seeks a declaration or an injunction, such as claims for the construction of a document, the determination of a point of law, or the enforcement of an arbitral award. Part 8 claims are also appropriate for

claims that follow a special procedure, such as claims under the Companies Act 2006, claims for rectification of the register of title, or claims for probate or administration of estates.

Civil proceedings officially start with the issue of the [claim form](#). In the High Court, this is done by filing the claim electronically through CE File.

Courts charge a fee for issuing a claim. The fee is dependent on the amount being claimed plus interest and currently ranges from £35 (where the value of the claim is no more than £300) to £10,000 (where the value of the claim is more than £200,000). If the claimed amount is left blank, the fee will be £10,000. Fees change periodically. The current civil court fees can be found [here](#).

The claim form sets out the names of the parties, their legal representatives (if relevant), the nature of the claim and the amount or remedy the claimant is seeking. The details of the claim will be set out in the particulars of claim (POC), which can be included in the claim form or in a separate document served at the same time or within 14 days of the claim form. A response pack must be included with the POC and includes forms for acknowledging service of the claim form and POC, defending or admitting the claim and if appropriate, challenging the court's jurisdiction.

Claim forms served within the jurisdiction must be served within four months of issue, those served outside the jurisdiction must be served within six months of issue and permission of the court may be required. This is a complicated area and local advice should be sought. In some cases, it may also be possible for the claimant to request an extension of time for the service of the claim form.

Service of the claim can include personal service, service by post, email or other electronic means (if agreed by the other parties). CPR 6 contains a list of the different methods of service permitted. Sometimes service of a claim form is impossible by the means provided for in the CPR, for example, in the case of a claim for crypto asset fraud where the claimant does not know physically who the defendant is or where they may be located. The English court has been creative in such situations and in cases such as [Osbourne v Persons Unknown Category A](#), the court permitted the claimant to serve her claim form by NFT. On other occasions the courts have allowed service via social media platforms such as Facebook and Instagram.

If the claim is to be served on someone based outside the jurisdiction it must fall within one of the gateways set out in PD6B and the court's permission may be required. In October 2022, a new gateway 25 was added with the aim of strengthening the court's power to order foreign non-parties to provide information or documents and to help claimants who urgently need to find the right defendant or track stolen assets. The gateway was introduced for cryptocurrency fraud claims. The court's permission to serve outside the jurisdiction will not be required when there is an exclusive jurisdiction clause in favour of the English court.

The POC should include the statement of the facts on which the claimant relies, the legal basis for the claim, the relief or remedy sought by the claimant, and any supporting documents or evidence that the claimant wishes to rely on. The POC should be clear enough to enable the defendant to understand the claim and to respond to it. The POC should also comply with any relevant practice directions or PAPs that apply to the type of claim being made.

Law stated - 21 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The CPR contains the procedure the parties should follow and sets out various time limits they must comply with.

The POC can be served at the same time or within 14 days of the claim form.

The acknowledgement of service must be filed within 14 days from the date on which the defendant was served with the POC (whether served together with the claim form or separately). If the claim is to be defended, the defendant is provided with a further 14 days to serve a defence or to contest the court's jurisdiction (see CPR 10 and 11).

According to CPR 15.4, a defence must be served within 28 days of service of the POC. This time can be extended by written agreement between the parties for up to 28 days (CPR 15.5) or by court order on application by the defendant (CPR 15.6). If the defendant fails to serve a defence in time, the claimant may apply for judgment in default (CPR 12).

If the defendant serves a defence and counterclaim, the claimant may serve a reply and defence to counterclaim within 21 days after service of the defence (CPR 15.8). If there is no counterclaim, serving a reply is optional unless the court orders otherwise (CPR 15.9). A reply should only be served if it is necessary to deal with any new issues raised in the defence or to advance a positive case that is not already set out in the particulars of claim (CPR PD 15 paragraph 2.1).

The case management phase begins after the statements of case have been served. The claim will be allocated to a 'track' by the court: the small claims track for claims up to £10,000, the fast track for claims between £10,000–25,000, the intermediate track for claims up to £100,000 and the multi-track for claims over £100,000.

Directions to take the case to trial will then either be given by the court or agreed by the parties, depending on which track the claim is allocated to. In multi-track cases, the Directions set out when documentary evidence and witness statements will be exchanged, whether expert evidence is required and how long the trial is likely to take. If the parties are unable to agree the directions this is considered by the court at a case management conference (CMC) and the court will make orders ensuring that an appropriate timetable is put in place.

English court procedure is continually evolving, and recent updates include the addition of a Shorter Trial Scheme and a Flexible Trial Scheme within the Business and Property Courts. The Shorter Trial Scheme is designed for cases that do not require extensive disclosure or witness evidence with cases expected to reach trial within eight months of the CMC and judgment delivered within six weeks of conclusion of the trial, while the Flexible Trial Scheme allows parties to tailor procedures by agreement to ensure they are suitable for their case.

Law stated - 21 May 2025

Challenging the court's jurisdiction

- 7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

The court's jurisdiction can be challenged under CPR 11 on the basis that (1) the court does not have territorial jurisdiction or (2) where it does, the court should not exercise its jurisdiction in the matter.

The defendant must file the acknowledgement of service (AOS) confirming it wishes to contest the court's jurisdiction. The defendant then applies for an order seeking a declaration that the court has no jurisdiction or should not exercise any jurisdiction that it may have (CPR 11.1). This application must be within 14 days (28 days in the Commercial Court) of filing the AOS and be supported by evidence (in the form of a witness statement as to why jurisdiction is contested) and a draft order. Failure to file the application within this time frame equates to submission to the court's jurisdiction. General guidance on how to make an application is contained in CPR 23. Generally, the application to contest jurisdiction will be considered at a hearing and the court will either agree to the proposed order or decline it.

If the court makes the requested order that it does not have jurisdiction, further provisions can be made, including setting aside the claim form. If the court declines to make the order sought, it will give further directions as to when the defence (and any subsequent statements of case) should be served.

The procedure under CPR 11 is also used if the parties have agreed that any dispute should be referred to arbitration, and one party issues proceedings in court in contravention of the arbitration clause.

If jurisdiction of the English courts has been specified in a jurisdiction agreement, then a party to that agreement may apply for an anti-suit injunction restraining the other party from commencing or continuing foreign proceedings in a different jurisdiction as the foreign proceedings amount to a breach of contract. Anti-suit injunctions are not granted lightly, as they may infringe the sovereignty of foreign courts and the principle of comity. In addition, they are penal in nature. An application for an anti-suit injunction is also made in accordance with CPR 23 and requires evidence in support in the form of a witness statement stating why the injunction should be granted, a draft order and a cross-undertaking in damages by the applicant that if the court later finds that the injunction had been wrongly granted and the respondent suffered loss as a result, the applicant will comply with any order the court may make in respect of that loss.

Law stated - 21 May 2025

Case management

- 8 | Can the parties control the procedure and the timetable? Can they extend time limits?

The CPR sets out the procedure parties should follow. The procedure is dependent on which track the claim is allocated to. The track may also determine the timetable and extension of time limits.

Once the defence is filed and proceedings enter the 'directions' phase parties have greater flexibility over both procedure, timetable and the ability to extend time limits (track allocation permitting).

The court where the claim is issued will allocate the claim to a track. To do this the court will assess the financial value of the claim.

Track	Financial value	CPR	Procedure	Further details
The small claims track	Claims up to £10,000 (£1,000 for personal injury)	CPR 27 CPR 27.1 sets out which CPRs do not apply to this track	Rules and procedure is less formal as designed for low value claims. Hearing will be informal. Only limited legal costs are recoverable.	The rules on standard disclosure and witness evidence do not apply, instead the court will give directions as to what it requires.
The fast track	Claims between £10,000 and £25,000	CPR 28	For straightforward claims with a trial of less than one day. Trial should be within 30 weeks from allocation and giving of directions and held in the County Court. Different costs rules apply to claims issued before and after 1 October 2023. For claims issued after 1 October 2023 the fixed	CPR does apply but: Expert evidence is limited to one expert per party per field and each party is limited to expert evidence in two fields. Disclosure is what is required in the case rather than standard disclosure. PD28.9.5 sets out a typical 30 - week

			recoverable costs regime applies.	timetable for fast - track directions.
The intermediate track	Claims between £25,000 and £100,000	CPR 28 PD 28	Less complex civil money claims. A quicker, simpler procedure than the multi - track for less complex cases that do not require more detailed preparation and a lengthy trial. Claims that include non - monetary relief are not suitable for this track. Claims will be allocated to a complexity band that provides an ascending scale of fixed recoverable costs.	The intermediate track is suitable for claims where: • the trial will not last longer than three days. • oral expert evidence is likely to be limited to two experts per claim. • the claim can be managed under the procedure set out in CPR 28 section IV; and • there are no additional factors that make the claim



				inappropriate for the intermediate track. The claim is not one that involves more than two parties on one side (the other side must only have one party).
The multi - track	Usually over £100,000	Heard in County Court or High Court. CPR 29 PD 29	Higher value and more complex claims that do not fall within the other tracks. Costs are managed under CPR 3 and CPR 45. Under the new simplified costs budgeting regime, multi - track claims valued at under £10 million generally require a costs budget unless an exception applies or the court decides otherwise. (More details can be found below).	Court will fix a date for a case management conference and may also fix a date for a pretrial review. Directions are decided by the parties and the court will agree if these are suitable. Directions will cover the extent of the parties' disclosure, witness and expert evidence and the preparations to trial. The directions will also set out the length of the trial. Certain time limits can be extended

				by agreement between the parties but where they impact on the trial date the court may intervene.

Parties are able to extend time limits without permission from the court in a number of scenarios:

- by a written agreement between the parties;
- a consent order agreed by the parties and approved by the court;
- a court order made on an application by one or more of the parties; and
- the court, exercising its case management powers.

In all these cases, the court will assess whether the extension of time will impact on the trial date, the reasons for the extension and whether it has been requested and granted previously. This will affect whether the extension of time will be granted.

If a party does not comply with a direction or order then a sanction can be imposed upon it for non-compliance. A party may then apply to the court seeking an order requesting relief from that sanction. The court will apply the three-stage test set out in *Denton v TH White Ltd* [2012] EWCA Civ 906. Under this three-stage test, the court will consider the seriousness of the failure to comply and why the default occurred and will evaluate all the circumstances of the case so as to deal justly with the application for relief.

Multi-track cases are subject to costs management unless the amount of money claimed as stated on the claim form is £10 million or more. In addition, costs management will not apply if the claim is non-monetary or not fully quantified and the claim form states that it is valued at more than £10 million, or is made on behalf of a person under 18, or is subject to fixed costs or the court otherwise orders.

Under the new simplified costs budgeting regime, multi-track claims valued at under £10 million will require a costs budget, unless an exception applies or the court decides otherwise. The pilot schemes (PD 51ZG1 and PD 51ZG2) will apply to claims issued on or after 1 April 2025 and prior to 1 April 2028. PD 51ZG1 requires all parties in certain Business & Property Courts (except litigants in person) to file simplified budgets (Precedent Z) 21 days before the first CMC. For claims worth £1 million or more, full costs management only applies if the court deems it necessary. Claims under £1 million also require the additional filing and serving of a budget discussion report (Precedent ZH) at least seven days prior to the CMC, and the court will typically make a Costs Management Order unless there is a compelling reason not to do so.

If the claim is subject to costs management, a cost budget and budget discussion report must be filed in accordance with the timings set out in CPR 3.13. A party that fails to file a costs budget will be treated as filing a costs budget that only covers its court fees (CPR 3.14) and may not be able to recover its legal costs from the other party if it is successful in the case. Budgets should be completed on form [Precedent H](#).

The court has the right to review costs budget even where they are agreed between the parties to ensure they are reasonable and proportionate.

Law stated - 21 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is a duty to preserve documents and other evidence pending trial and parties must share documents with other parties including those that are unhelpful to their case. This is called disclosure.

The relevant rules are contained in PD57AD, for those claims progressing through the Business and Property Courts, and CPR 31 for all other claims in which disclosure applies. CPR 31 also applies to some aspects of the disclosure scheme under PD57AD.

The scope and nature of disclosure differs between PD 57AD and CPR 31. However, at an early stage a party's legal representatives have a duty under both CPR 31 and PD 57AD to inform their clients of the need to preserve disclosable documents. A document is broadly defined to include electronic communications and their metadata. Accordingly, it is very important that the parties consider carefully at the outset the retention of documents and the creation of new documents. If a document is destroyed during litigation, or even when litigation is reasonably foreseeable, the court may draw adverse inferences.

The disclosure process enables parties to formally declare which specific documents, or more broadly, which categories of documents exist or have existed. Once the obligation arises, a party must produce all relevant documents, both paper and electronic. This obligation continues until the case concludes. If a party becomes aware of a document that should be disclosed during the proceedings, they must do so.

A party's duty of disclosure is limited to documents that are or have been under its control, which includes documents that a party has a right to possess or inspect. The Court of Appeal

has upheld a decision that this includes personal devices belonging to employees and former employees (*Phones 4U Limited v EE Limited* [2021] EWCA Civ 116).

CPR 31.17 permits a party to apply to court for the disclosure of documents from a non-party to the proceedings, known as a third-party disclosure order. This application must be supported by evidence and is only granted if the documents sought are likely to support the applicant's case or adversely affect another party's case, and if disclosure is necessary for the fair conduct of the proceedings or to save costs. Section II of PD57AD incorporates CPR 31.17 for claims progressing through the Business and Property Courts.

A party to whom the document is being disclosed has the right to inspect it unless the party who disclosed it no longer has control over it or if the party disclosing the document has the right to withhold inspection of it. The party who has revealed or disclosed a document lets the other parties see the originals or gives them copies of any documents disclosed.

Under CPR 31, inspection is a different step from disclosure, whereas under PD57AD it is incorporated into the disclosure process as electronic copies are usually provided with the list of documents.

Under CPR 31, Standard disclosure is the usual order sought by the parties. It requires a party to only disclose documents on which they rely, documents that (1) affect their own case, (2) adversely affect the other party's case, and (3) support another party's case and any documents that are to be disclosed under a relevant practice direction. As discussed above, a party's obligation to disclose documents only extends to those documents that are or have been in their control. These documents are contained in a list that is served on the other parties in accordance with the timetable set out in the Directions order.

One of the aims of PD57AD is to make the process of disclosure suitable for more complex cases where the amount of electronic disclosure is significant. It contains a distinct procedure to that contained in CPR 31 although, as outlined above, there is some overlap.

PD57AD requires each party to give an Initial Disclosure list of documents to all other parties. The list should be given at the same time as the relevant statement of case is served and will include the principal documents that a party is relying on and that help the other parties understand the claim or defence they face. There are some situations where initial disclosure is not needed, including where the parties agree to dispense with it.

Where it considers it appropriate to resolve the issues in the case, the court may order Extended Disclosure. This consists of five models of disclosure. Parties can attribute a different model of disclosure to a different issue in the case. Each disclosure model varies in scope depending on the facts and complexity of the case. The models range from an order that no disclosure should be made to the broadest form of disclosure (requiring production of documents that may lead to a train of enquiry). This is recorded in the disclosure review document (DRD).

The DRD is intended to streamline the disclosure process, ensuring that it is handled efficiently and effectively, with a focus on the key issues pertinent to the case. The DRD is a document produced jointly by the parties. The document typically contains sections such as a list of issues that may require disclosure of documents, suggestions for models of Extended Disclosure, each with different requirements, and an explanation of the scope and detail regarding the collection and production of documents, including both hard copy and electronic files.

The claimant must serve a completed draft of section 1A of the DRD, which includes a draft list of the key issues for disclosure, within 21 days of the filing and service of the defence or any later statement of case if that is when a request for Extended Disclosure is first made. The defendant must respond to the claimant's draft List of Issues for Disclosure no later than 28 days after the claimant has served the draft.

As mentioned above, under PD57AD inspection is not a separate step as electronic documents are usually given at the same time as the List of Documents is served.

Law stated - 21 May 2025

Evidence – privilege

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10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

There are two principal categories of legal professional privilege (LPP) under English law: legal advice privilege and litigation privilege. If documents fall into either of these two categories, the documents do not need to be shown (inspected) to the other party or the court.

Legal advice privilege

This protects confidential communications between a lawyer and their client and evidence of those communications, provided that communications are for the dominant purpose (ie, the ruling, prevailing or most influential purpose) of conveying legal advice (*R (Jet2.Com Ltd) v Civil Aviation Authority* [2020] EWCA Civ 35). The protection does not extend to communications with a third party. A lawyer includes a qualified in house lawyer or foreign qualified lawyer as long as they are acting as a lawyer and not simply giving business or commercial advice.

Unlike in other jurisdictions, a document will fall under legal advice privilege irrespective of whether the advice was conveyed by in-house lawyers or an external lawyer. The document must, however, be for the dominant purpose of conveying legal advice (*R (Jet2.Com Ltd) v Civil Aviation Authority* [2020] EWCA Civ 35). The advice must also be legal in nature and cannot simply be commercial advice.

Only communication with the client is protected as the meaning of client is narrowly construed (*Three Rivers District Council and Others v The Governor and Company of the Bank of England* [2003] EWCA Civ 474 (*Three Rivers No. 5*)). Legal advice should be sought as to whether the privilege will extend to all persons who are receiving the advice. If they are outside the narrow confines of the definition of 'client' the advice will no longer be privileged and may need to be disclosed in the event of a dispute.

Litigation privilege

This privilege extends to communications both between a lawyer and their client as well as third parties (eg, an expert witness) provided that it is created for the sole or dominant purpose of pursuing or conducting the litigation. For the privilege to apply, litigation must be pending or in the reasonable contemplation of the parties (so a 'real likelihood' rather than a 'mere possibility').

Where a privileged email attaches non-privileged documents the Court of Appeal has held that LPP only applies to the email itself, not the documents attached to it. If an attachment is not privileged, it must be disclosed even if it was sent with a privileged email (*Sports Direct International Plc v Financial Reporting Council* [2020] EWCA Civ 1JJ).

LPP plays a pivotal role in internal investigations and those by Regulators. Parties are often unsure what they can disclose and what can remain cloaked in privilege. In an important ruling the Court of Appeal in *ENRC v Director of the SFO* [2018] EWCA Civ 2006 held that litigation privilege could apply to documents created during the course of an internal investigation prior to the commencement of criminal proceedings by the SFO as they had been created by ENRC for the dominant purpose of resisting or avoiding criminal

proceedings. The rationale was that businesses should be able to create documents during an investigation without fearing that they might be incriminating themselves.

There are other grounds of privilege of which it is important to be aware:

- without prejudice communications between the parties intended to resolve the dispute;
- communications between a party to legal proceedings and a third party where both parties share a common interest in the proceedings (for instance, third-party litigation funders);
- documents that pass between co-parties to legal proceedings;
- communications that would tend to incriminate a party criminally; or
- that would be adverse to the public interest.

Law stated - 21 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

The court will give directions for the exchange of written evidence from witnesses and experts at the CMC.

A witness statement includes the evidence that the person would give orally if called to do so at trial. The court will also give additional directions as to the order in which witness statements are to be served and whether or not witness statements are to be filed. If a witness statement is served late then the witness may not be allowed to give evidence at trial unless the court gives permission.

A witness statement must be produced in accordance with the rules in CPR 32 and Practice Direction 32. It must be in the witness's own words and contain a statement of truth. If a witness statement is in a foreign language, a party wishing to rely on it must file the statement, together with a certified translation, with the court.

Practice Direction 57AC and its accompanying Appendix, which contains a statement of best practice, must be followed for all trial witness statements in the Business and Property Courts. These rules set out how the witness evidence should be prepared. The witness statement will need to be endorsed by a certificate of compliance signed by the relevant legal representative confirming that they have explained the purpose and proper content of a witness statement to the witness and believe that the witness statement complies with PD57AC (including the Appendix) and paragraphs 18.1 and 18.2 of PD 32 (PD57AC, paragraph 4.3). If the statement does not comply with PD57AC the court retains the power to strike out the statement and prevent its use at trial but in most cases the court will order the party to redact the non-compliant sections or replace the whole statement with a compliant one.

The Directions Order will set out the number of experts each party will call and the issues the expert evidence will consider. Depending on the nature of the claim, the court may

appoint a single joint expert or allow the parties to choose their own expert. Expert evidence must be independent and not influenced by the pressures of litigation. The expert report should include a statement setting out the substance of all facts and instructions relevant to the report, the reasoning behind the expert's own opinions and other information as laid out in Practice Direction 35 of the CPR.

Law stated - 21 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Witnesses of fact and experts will generally be called to give oral evidence at trial. Their statements stand as evidence in chief, which means that they will be required to give evidence on the issues set out in their statement. Witnesses and experts are then cross-examined by the opposing party (usually by barristers) and then re-examined by the party who called them. The judge may also ask questions.

A witness statement of fact can still be used as evidence at trial by a party, even if the witness does not appear to testify in person. The party must notify the other parties, who can ask the court for permission to cross-examine the witness. If a party does not bring a witness to give oral evidence, the court may give less importance to his or her statement and in some cases may draw adverse inferences from the witness's absence.

If a witness or expert is based abroad, they may give evidence via video link if the court gives permission.

Although not widely used, the CPR does permit expert evidence to be heard together in a judge led process called 'hot tubbing'. This may mean the evidence is discussed on an issue-by issue basis rather than each expert giving evidence separately.

Law stated - 21 May 2025

Interim remedies

13 | What interim remedies are available?

The court has broad powers to grant interim remedies. These can include orders for the preservation or sale of property, interim prohibitory or mandatory injunctions, a freezing injunction, a search order for specific disclosure, payment into court and security for costs. CPR 25 contains a full list of those available.

The courts can grant a freezing injunction to prevent dissipation of assets or evidence. Usually, English courts will only make orders related to property within the jurisdiction. However, in exceptional cases, the English court will grant a worldwide freezing injunction if the respondent does not have enough assets within the jurisdiction to cover the applicant's claim. The English court may also grant interim relief (usually in the form of freezing injunctions) in support of legal proceedings anywhere in the world.

Often, when applying for an injunction, the applicant will apply without telling the other side that they are seeking the injunction. This is an application made 'without notice'. This is because they may be concerned that the other party will seek to destroy or remove the asset or evidence that is the subject of the injunction. In this case, the party seeking the injunction must comply with the duty of full and frank disclosure by informing the court of any arguments that are adverse to its position. This includes any arguments that are prejudicial or unfavourable to the position of the applicant. An injunction that is granted on this basis can be set aside if a court decides that the duty has not been complied with.

An interim remedy can be applied for at any time during the proceedings and even after judgment has been given. This is common in the case of freezing injunctions where the applicant is concerned that the losing party may dissipate assets to frustrate the judgment handed down by the court. The court may also grant an injunction against defendants who cannot be identified. These are against persons unknown or 'newcomer injunctions' (*Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47).

Law stated - 21 May 2025

Remedies

14 | What substantive remedies are available?

The courts can award different remedies to the claimant, such as damages (which are meant to compensate for its loss, not to penalise the defendant), declarations, rectification, rescission, subrogation, injunctions (which can be mandatory or prohibitory), specific performance (a type of injunction that requires performance of a duty or obligation), and orders for the sale, mortgage, exchange or partition of land. Punitive damages, which aim to punish the defendant, may only be possible in very rare cases, for example in cases involving abusive conduct or intentional torts.

Monetary awards may include interest payments (see section 35A of the Senior Courts Act 1981). Interest will accrue on judgment debts from the date the judgment is issued at rate of 8 per cent until the debt is satisfied (see section 17 of the Judgment Act 1838, CPR 40.8 and 44.2(6)(g) for the High Court).

Law stated - 21 May 2025

Settlement

15 | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Parties are encouraged to consider settlement throughout the course of litigation. It is particularly important to consider ADR at the pre-action stage of a claim and prior to the CMC.

Settlement offers can be made at any point before judgment. There are no rules governing the process unless the offer is made in accordance with CPR 36, which is considered as forming its own 'code'. Under Part 36 of the CPR, settlement offers have specific cost implications and must state a period after which the defendant may be liable for the claimant's costs. Part 36 offers are a very important strategic tool in litigation because they create an incentive for parties to settle and avoid the risk of adverse costs consequences. If an offer is not accepted by the other party and the outcome of the case is at least as favourable as the offer, then the offering party may be entitled to enhanced costs and interest from the date of expiry of the offer. Conversely, if a party rejects a Part 36 offer and the outcome of the case is less favourable than the offer, then the rejecting party may have to pay the offering party's costs and interest from the date of expiry of the offer.

Offers outside CPR 36 are typically made on a 'without prejudice' basis, which means that the offer is not disclosed to the court. A 'Calderbank offer' is expressed to be 'without prejudice save as to costs', which means the offer cannot be disclosed to the court except when it is considering the question of costs. It is separate to a Part 36 offer as it can be made outside the parameters of Part 36. Multiple offers can be made during the litigation and the costs consequences mean that there are real risks for the receiving party not accepting a sensible offer.

When the parties agree to settle, they sign a consent order and have it sealed by the court. A Tomlin order is a kind of consent order that has two parts: a 'public' part that shows that the parties have settled, and an annex that contains the confidential terms of the settlement. The Tomlin Order acts as a legally binding contract that can be enforced by the court without initiating new proceedings in the case of breach.

Law stated - 21 May 2025

Enforcement

16 | What means of enforcement are available?

There are different ways to enforce a judgment from a civil court in England and Wales. A court will not automatically enforce a judgment or order that a defendant chooses not to comply with. Claimants will need to seek the most appropriate method of enforcement depending on the nature of the judgment and the identity and location of the judgment debtor.

If the judgment is for a money payment and the debtor has assets that can be easily seized and sold, the court can issue a writ or warrant of control to order an enforcement officer to take and sell the debtor's goods.

A third-party debt order can be obtained and prevents funds being paid to the debtor from a third party by diverting them to the creditor instead.

The court can enforce a charging order, which charges on the debtor's interest in any land, securities or funds. This usually stops the debtor from selling any land with a charge on it without paying off the creditor first.

The court can order an attachment of earnings, which would mean that some of the debtor's income would be deducted from the debtor's income by the employer and paid to the creditor until any debt is paid off.

Alternatively, a creditor can use various insolvency procedures, such as bankruptcy, appointment of a receiver or a winding-up order.

In May 2024, the Civil Justice Council (CJC) decided to reassess civil enforcement and its shortcomings to improve accessibility, fairness, and efficiency in the civil justice system. It set up an Enforcement Working group to do this. The Enforcement Working Group held a 12-week public consultation, which closed on 16 September 2024. The Working Group published its report on [Enforcement](#) in April 2025. The report highlighted the need for a more efficient, user-friendly system that balances a creditor's rights with the protection of vulnerable debtors. Among its key recommendations are the establishment of a single unified digital enforcement court to combine High Court and County Court enforcement mechanisms, new requirements for default judgments (such as proof of service and compliance with the Pre-Action Protocol for debt claims) to reduce unfair outcomes, and the immediate implementation of Part 4 of the Tribunals, Courts and Enforcement Act 2007 to facilitate enhanced information sharing and more streamlined enforcement.

The key next steps highlighted in the CJC's report include exploring deeper reforms to enforcement (such as considering a unified, possibly judicial officer-led model), implementing a single digital enforcement court that merges High Court and County Court procedures, and bringing Part 4 of the Tribunals, Courts and Enforcement Act 2007 into force to improve access to accurate financial information. The CJC will now review the report's recommendations.

Law stated - 21 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

The general rule for civil proceedings (all hearings and trials) is that they are held in public. Only in exceptional circumstances can hearings be held in private, irrespective of the parties' consent. These exceptional circumstances are laid down in CPR 39.2, where a court might allow for proceedings or a part of them to take place in private if it is found necessary for the administration of justice.

The public can request access to statements of case (but not documents filed with them) and judgments and orders (CPR 5.4C(1)). As such a non-party can access the claim number, parties and legal representatives. The reasoning behind this is that the English civil court system operates on the basis of open justice. If the matter goes to trial, witness statements relied on in court are also made public.

If a party wishes to keep a statement of case out of the public domain, then an application can be made under CPR 5.4C(4). Filing such an application can be done without notice. Based on this application, the court may either grant an order for the statement of a case

not to be made available to a non-party, restrict access to the documents or make any other order that it thinks fit.

The Civil Procedure Rule Committee (CPRC) has proposed to amend CPR 5.4(C). The new amendment would allow non-parties to access skeleton arguments, expert reports and witness statements prior to hearings. Following a consultation, which has now closed, and in light of a number of very critical responses the CPRC has decided to postpone changing the rule for the moment. Cockerill J is now chairing a sub-committee to review new possible amendments to CPR 5.4C.

In certain types of litigation, such as that involving trade secrets or patents, it is vital that documents are subject to strict rules regarding who can access them. A confidentiality club deals with this scenario as it provides a framework ensuring that only designated individuals, usually the lawyers, can view the relevant material. Members of the 'club' will be required to transmit material in ways to ensure confidentiality is maintained.

Law stated - 21 May 2025

Costs

- 18** | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

CPR 44 contains the general rules on costs that apply to civil claims in the English courts. The starting point is that the unsuccessful party pays the costs of the successful party. However, the court has a wide discretion to depart from the usual rule depending on the way the litigation has been conducted, the amount of costs incurred and whether they are proportionate to the amount in dispute, and the effect of any Part 36 offers (see below).

At the end of a hearing, the court can either order the unsuccessful party to pay fixed costs or have their costs assessed either by summary assessment or in the case of a trial, by detailed assessment. Summary assessment typically applies at the end of a short hearing, which lasts for less than one day, or trial (usually in the fast track) when the judge assesses the costs payable by one party to another based on costs schedules submitted by the parties at least 24 hours prior to the hearing.

At the end of a longer interim hearing or following judgment, the court may make a costs order but usually will not order how much should be paid. If the parties cannot agree the amount, they will submit to a process called detailed assessment. Detailed assessment provides that a costs officer will determine the costs of the case and is a complex process, with steps similar to litigation. As a result, it is lengthy and costly. Few cases proceed to detailed assessment and parties usually agree the amount owed instead.

Track allocation will also affect costs recovery. If a case is allocated to the small claims track, costs recovery is very limited. In the fast and intermediate tracks, costs are usually fixed and CPR 44 is not applicable. Under the new simplified costs budgeting regime, multi-track claims valued at under £10 million will require a costs budget, unless an exception applies or the court decides otherwise. The pilot schemes (PD51ZG1 and PD 51ZG2) will apply to claims issued on or after 1 April 2025 and prior to 1 April 2028. PD51ZG1 requires all

parties in certain Business & Property Courts (except litigants in person) to file simplified budgets (Precedent Z) 21 days before the first CMC. For claims worth £1 million or more, full costs management only applies if the court deems it necessary. Claims under £1 million also require the additional filing and serving of a budget discussion report (Precedent ZH) at least 7 days prior to the first Case Management Conference, and the court typically makes a Costs Management Order (CMO) unless there is a compelling reason otherwise.

If no CMO is made, updated simplified budgets will still be required at later stages, and any significant discrepancy between a filed budget and the eventual claimed costs may require an explanation on assessment, where reliance and proportionality arguments under CPR 44 can limit recoverable fees. The court has broad discretion to sanction non-compliance, including restricting costs to court fees alone.

If a defendant is confident of their ability to defend a claim but is concerned about the claimant's ability to pay any costs award at the end of the matter, they may apply in certain circumstances for an order for 'security for costs', which will require the claimant to pay money into court or provide another form of security as a precondition to being able to continue with the claim. Security for costs can also be sought by a claimant against a defendant in respect of a counterclaim.

Parties are also able to protect their positions in relation to their costs burden in the event they are unsuccessful by making offers to settle under CPR 36. Part 36 offers are considered as forming their own 'code'. These offers can be made at the pre-action stage and during the action itself. Under Part 36 of the CPR, settlement offers have specific cost implications.

Where a defendant makes a Part 36 offer that is rejected, if the claimant does no better at trial the claimant will generally not recover its costs after the period within which it was possible to accept the Part 36 offer (known as the 'relevant period') and will be liable to pay the costs incurred by the defendant after the relevant period, and interest on those costs. If a claimant makes a Part 36 offer that is rejected, and the claimant succeeds either in obtaining an amount equivalent to or better than the Part 36 offer, the claimant is entitled to an enhanced-costs award (that is, a higher rate of recovery, plus interest on both costs and damages up to 10 per cent above the base rate). In addition, the court can impose an additional penalty on the defendant, requiring an additional payment of damages up to a maximum of £75,000. The offer must include interest up to the end of the 'relevant period'.

Part 36 offers are a very important strategic tool in litigation. Multiple offers can be made during the litigation and the costs consequences mean that there are real risks for the receiving party not accepting a sensible offer.

Law stated - 21 May 2025

Funding arrangements

- 19** | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

English law allows conditional fee agreements (CFAs) for civil litigation matters, where the solicitor's fees (or part of them) depend on the outcome of the case. Usually, the solicitor receives a lower payment or no payment if the case is lost, but a normal or higher than normal payment if the client wins. However, to make CFAs valid, certain requirements must be met. The success fee must be based on a percentage increase of fees charged (not a percentage of damages won), and such increase cannot go beyond 100 per cent of the normal rate. These agreements are becoming more common in commercial cases. The party's costs include a success fee that the losing party does not have to pay, except in rare cases.

Parties can also enter into a damages-based agreement (DBA), where if the party is successful the solicitor receives a percentage of any damages recovered irrespective of what the solicitor's fees are. In commercial cases the amount that can be sought from the client is capped at 50 per cent of the sums recovered. In personal injury cases the cap is 25 per cent. For a DBA to be valid it must comply with the requirements set out in [The Damages-Based Agreements Regulations 2013](#).

In addition, English law also allows litigation to be funded by a third party. Litigation funding agreements (LFAs) are agreements between litigation funders and claimants permitting the litigation funder to recover an amount payable from the proceeds recovered by the claimants if the claim is successful. This is an increasingly common way of funding litigation, in particular for class actions.

In a highly significant ruling, with implications for third-party funders and those bringing collective (class) actions in the Competition Appeals Tribunal (CAT), the Supreme Court held in *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)* [2023] UKSC 28 that an LFA, which entitles a funder to a percentage of any awarded damages, was a DBA and because it did not comply with the statutory requirement for DBAs was unenforceable for funding collective proceedings in the CAT. Many of the LFAs in existence are likely not to comply with the DBA regime, and as a result will require renegotiation to bring them outside of the statutory definition of a DBA, if indeed this is even possible.

Numerous funding arrangements underpinning active claims before the CAT are structured in this manner; this presents significant issues, as the Competition Act 1998 prohibits the use of DBAs in opt-out competition class actions. Consequently, this ruling has provided CAT defendants with substantial leverage, while simultaneously creating considerable difficulties for funders who have been renegotiating the terms of their funding agreements. Although this development is unlikely to be fatal to the financing of competition class actions, it is expected to incite further challenges to funding arrangements, given the prevailing uncertainty regarding what constitutes a DBA. The previous UK government, under Rishi Sunak, was intending to legislate to reverse the *PACAAR* decision; however, the draft Bill did not make it through the legislative process in the time allotted prior to the general election. There has been no indication from the new government that it will take a similar course.

There are currently a number of claims in the CAT in which the defendants are challenging the validity of LFAs agreed between funders and class representatives, including [Alex Neill v Sony Corporation](#), *Apple Inc. & Apple Distribution International Ltd v Kent; Commercial and Interregional Card Claims II Ltd v Visa Inc & ors; Commercial and Interregional Card Claims I Ltd v Mastercard*; and *Gutmann v Apple Inc & ors*. The challenges have reached

the Court of Appeal, which initially stayed the claims pending the proposal to legislate to reverse PACAAR however, as this no longer appears imminent, the Court of Appeal has lifted the stays and a hearing will take place in summer 2025 to determine the position. In addition to this uncertainty, a settlement has been agreed in the *Merricks v Mastercard* class action under the CPO mechanism. A hearing took place in February 2025 for the CAT to determine whether the settlement figure agreed between Mr Merricks and Mastercard for £200 million and the terms of the settlement agreement, are just and reasonable. The settlement was mired in controversy with the funder of the claim alleging that the settlement was too low for each class member and was agreed without consulting it. The settlement has resulted in a much lower return to the funder than it was expecting. The decision of the CAT is awaited.

In another significant judgment handed down in April 2025 the Court of Appeal addressed a further funding issue in *Gutmann v Apple Inc & Ors* [2025] EWCA Civ 459 holding that the CAT did have jurisdiction to make an order at the conclusion of the collective proceedings that the funder's fee or return be paid out of the damages awarded to the class in priority to the class and that class representatives had the ability to enter into LFAs contemplating such orders. This was an important victory for litigation funders.

Law stated - 21 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

Solicitors should discuss with their clients how costs are to be met and consider whether the client's liability might be insured (paragraph 8.6 of the Code of Conduct for Solicitors).

There are two types of legal expenses insurance policies:

- Before the event insurance – legal costs insurance that the client already has in place prior to the litigation. These policies usually involve paying a yearly fee and offer protection for some or all of the client's possible expenses in any future disputes. They are not typically applicable to large-scale commercial lawsuits.
- After the event insurance – insurance that is taken out after a dispute has arisen to meet some of the legal costs and expenses of the case. These policies usually cover the expenses of a party (such as fees for lawyers and experts) and the possibility of paying the legal fees of the other side if the insured loses the litigation.

The extent of coverage will depend on the details of each individual policy.

The insurance cost is not usually paid by the losing side. ATE insurance costs are still recoverable in publication and privacy cases but this exception does not apply to data breach or cyberattack cases, so in those cases, the losing side will not pay the ATE insurance costs (*Warren v DSG Retail Ltd* [2021] EWHC 2168 (QB)).

Law stated - 21 May 2025

Class action

- 21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The CPR provide for two formal mechanisms by which collective actions can be brought. The first of these is a representative action brought under CPR 19.8, which can be brought either as an opt-in or an opt-out action. Under this procedure, the representative has to demonstrate that he or she had 'the same interest' as everyone else in the class. A judgment given under such an action is binding on all parties represented unless otherwise stated.

Despite an increase in claims utilising CPR 19.8's representative action mechanism, the English courts have maintained a strict interpretation of the 'same interest' criterion, resulting in certain claims being dismissed. In *Lloyd v Google* [2021] UKSC 50, the UK Supreme Court determined that loss of control damages are not available under the Data Protection Act 1998 for such claims, as the 'same interest test' necessitates proof of individual circumstances, precluding it from meeting the requirement that each claimant shares the same interest.

To circumvent these issues, the class representative in [Prismall v Google](#) [2024] EWCA Civ 1516, decided to bring his claim in the tort of Misuse of Private Information (MPI) and confine the damages to those of a nominal claimant that the parties called 'the lowest common denominator' whose claim represented the 'irreducible minimum scenario' of a claimant in the class. As with *Lloyd v Google*, this approach was also unsuccessful, with the Court of Appeal ruling on 11 December 2024 that Prismall did not have a realistic prospect of establishing the tort of MPI because it could not be established that everyone in the class had the 'same interest' as an individualised assessment of the tort needed to be made in each case. Prismall, acting as class representative, initiated the claim on behalf of approximately 1.6 million patients following the transfer of their medical records from the Royal Free Hospital to DeepMind Technologies without explicit consent. The data was used for the development of an app intended to aid in the detection and diagnosis of kidney disease. Prismall alleged that this data transfer constituted a misuse of the patients' private information, warranting damages for the loss of control over their personal data. The court's judgment focused on whether the class of claimants shared the 'same interest' as mandated by CPR 19.8.

The court determined that the class did not possess the 'same interest', as not all members could substantiate the elements necessary for a claim of misuse of private information, particularly the establishment of a reasonable expectation of privacy in the transferred data. The court found that the lowest common denominator claimant lacked a realistic prospect of success because the claim did not meet the threshold of seriousness required for such a misuse. For instance, certain claimants might have previously made their medical information public, not provided private medical details to their doctor, or experienced no distress due to the data transfer. Additionally, social media and press reports indicated that some class members had publicly disclosed their medical histories, thereby invalidating any claims to privacy. These factors led to the conclusion that the class did not share the 'same interest'.

Consequently, the Court of Appeal ruled that the representative action could not advance, resulting in the dismissal of the appeal and the striking out of the claim. While Mr Prismall retains the option to appeal this ruling, the decision aligns with prior UK Supreme Court judgments in this domain, suggesting that collective actions in the context of data privacy will face significant challenges in gaining traction.

The second mechanism, a group litigation order (GLO), is not a true class action route, but rather a means for the court to manage together large numbers of cases with 'common or related issues of fact or law'. They can only be used where each claimant opts into the litigation, and so can be less attractive to claimant lawyers and funders alike due to the greater upfront work and investment required to build the class and prepare individual claims. It is used where 'same interest' arguments under CPR 19.8 are insurmountable, and is the mechanism of choice in product liability, personal injury and post-data breach claims in recent years. When a judgment is given in relation to a GLO, it is binding on all parties to the GLO unless the court states otherwise.

In addition to the CPR, legislation has been enacted to implement specific collective regimes to ensure an economically viable means of redress is available. The most notable example of this is the Consumer Rights Act 2015, which currently provides the only true opt-out class action regime in the UK. Claims can be filed in the Competition Appeals Tribunal (CAT), if they are based upon a competition law complaint, by a single representative for an entire class. In 2020, the Supreme Court handed down a decision in the case of [Merricks v Mastercard](#), which significantly lowered the threshold to be used by the CAT when assessing whether a Collective Proceedings Order (CPO) should be made in relation to a claim. Two major parts of this test, commonality and suitability, had, up until the *Merricks* decision, often proved insurmountable for many claims. The result of this was an explosion of cases being filed in the CAT, a development that is showing no signs of slowing down. Many of these claims are targeting large technology companies probably because they are easier to frame in anti-trust terms as, in order to bring a claim in the CAT, a party needs to establish an infringement of competition law has occurred. If these claims succeed, they can unlock all the advantages of an opt-out class action regime without the same obstacles regarding 'same interest' that they would likely face in the High Court.

Another notable development is the increase in the size of classes represented. In 2022 alone, the 15 new actions filed in the CAT claimed to represent, in aggregate, 169 million people. However, the Supreme Court decision in the case of [R \(on the application of PACCAR Inc and others\) v Competition Appeal Tribunal and others](#) may have put paid to litigation funders taking on these type of claims for the moment. This is because the Court ruled that litigation funding agreements under which payment is calculated by reference to a percentage of the sum recovered (or has some direct relationship with such sum) constitute DBAs. Many funding arrangements supporting active CAT claims are structured on this basis; this is highly problematic given that, under the Competition Act 1998, DBAs are prohibited for use in opt-out competition class actions. As a result, CAT defendants have sought to challenge the terms of existing arrangements and required funders to renegotiate the terms of their funding agreements so that their return is calculated as a multiple of the sum invested in the proceedings.

Law stated - 21 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal is the means by which a party can seek to have the judgment or order obtained from a lower court reviewed by a higher court.

A party that loses a case may appeal to a higher court, depending on the level of the court that made the decision. The County Court, the High Court and the Court of Appeal are the lower courts that can be appealed from, and the Supreme Court is the highest court that can be appealed to. Permission to appeal is usually needed from either the lower court at the time of the decision, or from the appeal court if time limits are followed. For appeals to the Supreme Court, an appellant can apply straight to the Supreme Court for permission if the Court of Appeal denies it.

The appeal court will allow an appeal where one of the following grounds of appeal can be made out (Part 52.21(3) of the CPR):

- the decision was wrong (in that it erred in law, in fact or in the exercise of its discretion) (CPR 52.21(3)(a)); or
- it was unjust because of a serious procedural or other irregularity (CPR 52.21(3)(b)).

Under CPR 52.12(2), if a direction is given by the lower court the appellant must file the notice within the period set by the lower court at the hearing (or any adjournment). This period may be longer or shorter than the usual default limit. If no direction is given by the lower court, the notice must be filed within 21 days of the decision being appealed, unless specific rules (CPR 52.8 to 52.11 and Practice Direction 52D) apply to alter this time frame.

The CPRC has agreed that the appellant's notice should be sealed prior to service, and the period for serving the sealed appellant's notice should be extended from seven days to 14 days. CPR 52.12(3) will be amended in the October 2025 CPR updating cycle to reflect this.

Law stated - 21 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

The procedure for the recognition and enforcement of a foreign judgment depends on whether reciprocal arrangements are made with the foreign country. If not, enforcement will be under the common law.

There is a distinction between recognition and enforcement. If a party only wishes to use the foreign judgment to prevent the matter from being relitigated in the English court, then the judgment needs only be recognised. However, if the party seeks to enforce against assets within the jurisdiction, then the judgment also needs to be enforced. The same principles generally apply to both stages.

Regimes that govern recognition and enforcement of judgments in England and Wales					
UK regime	European regime	Statutory regime	2005 Hague Convention on Choice of Law Agreements	Common law	2019 Hague Judgments Convention-
Governs judgments from Scotland and Northern Ireland.	Judgments from EU and certain EFTA countries given in proceedings instituted before 31 December 2020.	Administration of Justice Act 1920 provides recognition of judgments from the recognised foreign courts listed together with the Foreign Judgments (Reciprocal Enforcement) Act 1933 – includes many Commonwealth countries and others such as Israel and India.	Judgments where EU, Mexico, Singapore or Montenegro is designated in an exclusive choice of court agreement.	All other jurisdictions (including EU from 1 January 2021 where not referred to previously in this table).	In proceedings commenced from 1 July 2025 judgments between the UK, EU (not Denmark), Ukraine and Uruguay.

Following Brexit, the majority of the UK's reciprocal arrangements regarding the recognition and enforcement of judgments between it and the EU fell away. Joining the 2005 Hague Convention of Choice of Court Agreements provided an element of reciprocity with regard to exclusive jurisdiction clauses with the EU, although there is debate as to when the Convention applies. The UK asserts that exclusive jurisdiction clauses will be covered from 1 October 2015, the date it joined the Convention as a member of the EU. While the EU

submits that the relevant date is 1 January 2021. As there have been no cases yet in the EU considering the point, it is still to be determined.

The UK has also applied to join in its own right the 2007 Lugano Convention between the EU and EFTA countries. While the EFTA states have all agreed, the EU has stated that it is against the UK joining Lugano because participation in the Convention should not be offered to a third-party member that is not part of the internal market. The UK's application remains pending although the EU has not indicated it will revisit its decision.

On 12 January 2024 the UK signed the 2019 Hague Judgments Convention. It will enter into force for the UK on 1 July 2025 and will only cover judgments from proceedings that start after 1 July 2025. The UK has not made any declarations and so the Convention will apply in full (although this can change). The Convention is designed to provide a reciprocal framework for the recognition and enforcement of national court judgments in civil or commercial matters and applies to judgments emanating from non-exclusive, exclusive and asymmetric jurisdiction clauses. Regulations incorporating the Judgments Convention into domestic law have been laid before Parliament (Recognition and Enforcement of Judgments (2019 Hague Convention etc) Regulations 2024) enacting the necessary amendments to the Civil Jurisdiction and Judgments Act 1982, and the relevant changes to CPR 74 and PD74A have been drafted. These will take effect from 1 July 2025 when the Convention comes into force.

If no reciprocal enforcement arrangements exist (as is the case with the United States), judgments can be enforced at common law. This enables the creditor to sue on the foreign judgment in the English courts as if it was a debt. This is subject to certain conditions.

To enforce an English judgment in a foreign court local law must be considered. If the judgment falls within the 2005 Hague Convention on Choice of Court Agreements then that Convention will apply. Likewise, if the proceedings began prior to 31 December 2020, the Recast Brussels Regulation or the 2007 Lugano Convention will apply if the judgment is to be enforced in an EU or EFTA member state court.

Law stated - 21 May 2025

Foreign proceedings

- 24** | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

To collect evidence in England and Wales for use in civil proceedings in other jurisdictions, the foreign court must issue a Letter of Request. The process national courts should follow on receipt of a request for evidence is governed by the Evidence (Proceedings in Other Jurisdictions) Act 1975 (EPOJA), which gives effect to the Hague Convention of 1970 on the taking of evidence.

Those seeking to obtain evidence should instruct English solicitors. An application for an EPOJA order for evidence must be made to the Senior Master of the Queen's Bench Division of the High Court (Part 34.19 of the CPR), accompanied with written evidence, and by the original Letter of Request (CPR 34.17).

Law stated - 21 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

Arbitrations seated in England and Wales or Northern Ireland are governed by [the Arbitration Act 1996](#) (the Act), which is broadly based on the UNCITRAL Model Law. The Arbitration Act also includes some other provisions, such as the authority of the tribunal to grant interest, and defines an arbitration agreement more widely in that it is not limited to agreements about a 'specific legal relationship'. The Act contains a mixture of mandatory and non-mandatory provisions. If the seat of the arbitration is in England parties must follow the mandatory provisions but may opt out of the non-mandatory provisions and exclude these in their arbitration agreement.

The Law Commission in England & Wales consulted on whether changes should be made to the Act to ensure that arbitration law in England keeps pace with international developments. It concluded that the Act generally works well, and that root and branch reform is not needed nor wanted. Nevertheless, the Law Commission made several recommendations for targeted reform with the aim of the changes to ensure that the Act is fit for purpose and that it continues to promote the UK as a leading destination for arbitrations. In February 2025, the Arbitration Act 2025 (the 2025 Act) received Royal Assent, making a number of important amendments to the Act.

The Arbitration Act 2025 contains the following substantial changes:

- codification of an arbitrator's duty of disclosure;
- strengthening of arbitrator immunity around resignation and applications for removal;
- introduction of a power for arbitrators to dispose summarily of issues that have no real prospect of success;
- a revised framework for challenges under section 67 of the Arbitration Act 1996 (where the challenge alleges that the arbitral tribunal lacked jurisdiction);
- clarification of court powers in support of arbitral proceedings and emergency arbitrators; and
- a new rule on determining the governing law of an arbitration agreement. This now includes a new provision that the new rule should not apply to certain categories of investor-state arbitration agreement.

The 2025 Act is not yet in force.

Law stated - 21 May 2025

Arbitration agreements

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26 | What are the formal requirements for an enforceable arbitration agreement?

The key requirement of the Act in respect of arbitration agreements is that the agreement must be in writing and that the parties agree to submit all present and future disputes to arbitration (section 5 Arbitration Act 1996). This reflects the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). There is a high degree of flexibility under the Act. An arbitration agreement need not be signed by the parties. A written agreement may also arise merely from an exchange of written communications without the need for a formal document. It is also sufficient for an oral agreement to be recorded in writing by one of the parties or by a third party with the parties' authority.

The Act does not set out the form the arbitration agreement should take but most of the institutions that administer arbitrations will have their own clauses that parties can insert into the main agreement. These may set out who will administer the arbitration, the number of arbitrators and how they will be chosen, the governing law and seat of the arbitration and the language of the arbitration. A widely used example for arbitration administered under LCIA rules can be found [here](#).

The agreement to arbitrate is considered separable to the main contract it is contained within. This means that should the main contract be declared voidable for some reason the agreement to arbitrate will still be valid.

Usually, the agreement to arbitrate is governed by the law chosen by the parties. In the absence of any such choice, the Supreme Court in *Enka v Chubb* held that the agreement to arbitrate is governed by the law chosen to govern the main contract – unless, for example, that law would invalidate the agreement to arbitrate. Otherwise, the agreement to arbitrate will be governed by the law with which it is most closely connected, which is usually the law of the seat. The seat is the place where the arbitration is deemed legally to occur (even if hearings take place elsewhere or online). It is common for there to be an express choice of law to govern the main contract, and an express choice of seat for an arbitration, but no choice of law to govern the agreement to arbitrate. This can result in an arbitration being seated in England and Wales but, as a result of the decision in *Enka v Chubb*, for the arbitration agreement to be governed by a foreign law (the law governing the main contract). This might not be the intention of the parties and does not accord with other major arbitral jurisdictions.

Therefore, the new Arbitration Act replaces the common law in *Enka v Chubb* with a statutory rule that the law governing the arbitration agreement will be the law expressly chosen by the parties to apply to it, otherwise it will be the law of the seat. As a result, any law chosen to govern the main contract does not count as an express choice of law to govern the agreement to arbitrate.

However, a further clause has been added to the 2025 Act regarding investor treaty arbitrations that carves out those arbitrations 'derived from a standing offer to submit disputes to arbitration' contained in a treaty or the legislation of a country or territory other than the UK from this new rule.

The English courts are very supportive of arbitration and will stay a claim issued in the courts if the parties have made a valid agreement to arbitrate the dispute (section 9 of the Act). Since Brexit, this also includes the grant of anti-suit (and anti-enforcement) injunctions

to stop foreign proceedings anywhere (including EU countries) if they are issued in breach of an agreement to arbitrate under English law, which makes London a good place for international arbitration.

The enforcement of an arbitration agreement is governed by the New York Convention and therefore Brexit has no effect on the recognition and enforcement of arbitration awards.

Law stated - 21 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The number of arbitrators appointed depends on the size and complexity of the arbitration. Where a dispute is complex the parties may decide on a tribunal of three arbitrators. Each party will nominate an arbitrator and they in turn will agree on a chairperson.

Where there is no agreement on the number of arbitrators, the Act provides that the tribunal shall consist of a single arbitrator. The parties are free to agree on the procedure for appointing an arbitrator and may, for example, wish to defer to the appointment procedure of the relevant arbitral institution. The fallback position under the Arbitration Act 1996 in absence of an agreed procedure is that the arbitrator should be jointly nominated by the parties within 28 days of service of the request for arbitration. If the parties cannot reach an agreement on the choice of arbitrator, the Act permits either party to apply to court for directions as to tribunal's appointment.

The Act allows a party to object to the selection of an arbitrator, but only after the applicant has tried all other options. The reasons for dismissing an arbitrator under the Act include bias, insufficient qualifications, mental or physical disability, or improper or delayed conduct of proceedings that leads to substantial injustice.

Law stated - 21 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

Parties are free to choose the arbitrator and this is one of the advantages of arbitration over litigation. Often the institution administering the arbitration will have suitable appointees on its panel. As would be expected from a global arbitration centre, London offers a wide selection of arbitrators with various sectoral, linguistic and jurisdictional specialisms. It is notable that non-British arbitrators were selected by the [London Court of International Arbitration](#) (LCIA) in 55 per cent of cases in 2023, despite over 80 per cent of LCIA arbitrations being substantively governed by English law. It is also not uncommon for judges from the English Commercial Court — the supervisory court for arbitrations seated in England — to sit as arbitrators following retirement.

Law stated - 21 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act 1996 does not stipulate any substantive requirements for the procedure to be followed. Instead, in absence of an agreement between the parties, the Act confers power to the tribunal to decide all procedural and evidential matters. This is expressly stated to include matters relating to the timing and location of hearings, document production and rules of evidence. However, the tribunal's power to adjudicate procedural matters is subject to its 'general duty' to act fairly and impartially between the parties, and to adopt procedures suitable to the circumstances of the case avoiding unnecessary delay and expense. This is a mandatory duty under the Act and tribunal must act in accordance with it.

Institutional rules may also set out a rough procedure that parties can follow to help the arbitration run smoothly. For an example, see [article 14 of the LCIA Rules 2020](#).

Law stated - 21 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

There are limited circumstances in which the English courts may intervene to support the arbitral process. Some of the court's powers may only be used following the exhaustion of all other arbitral remedies or may only be considered within a limited time period after an arbitration award has been made. For example, under section 12 of the Act, a party can only apply to the court to extend time for commencement of arbitration after exhausting any available arbitral process for obtaining an extension of time.

The court may only intervene in accordance with powers contained in sections 42 to 45 of the Act. These powers are:

- to enforce a peremptory order of the tribunal;
- to secure the attendance of witnesses;
- to make orders in relation to property such as preservation or sale
- to appoint an emergency arbitrator; and
- to determine a question of law arising in the course of proceedings upon the agreement of all parties.

In addition, the court can order freezing injunctions and other interim compulsory injunctions to assist an arbitration. The parties may exclude the application of all powers upon agreement, with the exception of the court's power to secure the attendance of

witnesses under section 43 of the Act. This is because the tribunal only has jurisdiction over the parties to the arbitration agreement, and not third parties such as witnesses.

Section 9 of the 2025 Act contains an amendment to section 44 of the Act to make it clear that court orders under that section are available against third parties (people who are not party to the arbitration proceedings). For example, orders might be made against third parties who hold relevant evidence, or against banks that hold relevant funds. This aligns the position in arbitration proceedings with the position in court proceedings. Further, section 9 provides that third parties will not require the leave of the court to bring an appeal, thereby giving third parties the full rights of appeal usually available in court proceedings.

Law stated - 21 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

The powers available to the tribunal to grant interim relief depend on the arbitration agreement. Parties are free to agree that a tribunal may award any relief on a provisional basis, which the tribunal could grant as a final award. In the absence of an agreement, the Act expressly confers the power to the tribunal to make an interim award for security for costs and to give directions in relation to preservation of property or evidence. These are non-mandatory provisions of the Act and may be disapplied by the parties.

Law stated - 21 May 2025

Award

32 | When and in what form must the award be delivered?

The Act permits the parties to agree the form of the award. In absence of an agreement, the Act simply provides that an award must be in writing, be signed by all arbitrators, contain the reasons for the award, and state the date of the award and seat of the arbitration. If the parties have not agreed otherwise, the tribunal can choose the date for the award under section 54 of the Act and it has to tell the parties as soon as possible after it has made the award. The Act does not prescribe a time limit for the delivery of an award but allows the tribunal or a party to the proceedings to apply for an extension of time for making an award where the arbitration agreement imposes a time limit.

In respect of the timing of the award, the tribunal remains bound by its general duty, which includes avoiding unnecessary delay or expense. Ultimately, the parties may apply to have an arbitrator removed pursuant to the Act if they can prove that the arbitrator's failure to use all reasonable efforts in making an award has or will cause substantial injustice.

Law stated - 21 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Unless otherwise agreed by the parties, an arbitral award is final and binding upon them. An award may be challenged only on certain grounds set out in the Act, namely:

- lack of substantive jurisdiction of the tribunal (section 67);
- serious irregularity causing substantial injustice (section 68); or
- appeal on a point of law, but only where not excluded by agreement of the parties or the rules of the arbitral institution as this is a non-mandatory provision (section 69).

These grounds represent a compromise between the finality of an arbitral award, and the need to rectify awards that are unjust, incorrectly decided as a matter of law, or where the tribunal lacked jurisdiction. Sections 67 and 68 are mandatory and cannot be excluded by agreement between the parties. The Commercial Court is the forum for these claims.

The court will consider the forms of serious irregularity that are mentioned in section 68.2 of the Act. The standard for proving serious irregularity is high, and only in exceptional cases will an award be set aside. The applicant must not only prove that a serious irregularity has occurred, but also that the serious irregularity has resulted in significant harm.

The parties are free to exclude an appeal on a point of law under section 69 and the rules of most arbitral institutions exclude an appeal of this nature. If the parties agree that the arbitrator need not give reasons for his or her decision, this is considered to be an agreement to exclude the right of appeal. Further, there is no right to appeal to the court on a question of fact.

Section 11 of the Arbitration Act 2025 seeks to correct an anomaly in some applications that are heard under section 67 (lack of substantive jurisdiction). Effectively, if a party wishes to challenge whether the tribunal has jurisdiction to hear the claim it must do so under section 30 of the Act. In what seems to be a second bite of the cherry, if the tribunal confirms it does have jurisdiction, and issues an award, the party can challenge that award before the court under section 67 on the basis that the tribunal had no jurisdiction after all. In its decision in *Dallah v Pakistan* (2010), the Supreme Court said that, even where the question of the tribunal's jurisdiction has been fully debated before the tribunal, a challenge under section 67 is a full rehearing before the court. Section 11 redresses this imbalance so that in a situation where an application under section 67 is made by a party that participated in the arbitration and relates to an objection on which the tribunal has already ruled, there will generally be no full rehearing before the court. Specifically, there should be neither new grounds of objection nor new evidence before the court, unless it was not reasonably possible for the party to put these before the tribunal; and evidence should not be reheard by the court, unless necessary in the interests of justice.

Law stated - 21 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

The United Kingdom is a signatory to the New York Convention. The Act is unequivocal in that an arbitral award may be enforced in the same manner as a judgment or order of the court. The Act also contains a provision stating that an award obtained in the territory of a state that is party to the New York Convention shall be recognised as binding and may be relied on as a defence or otherwise in legal proceedings. The Act reflects article V of the New York Convention with respect to circumstances in which the enforcement of an arbitral award may be refused, in particular on grounds of public policy.

To enforce the award in England an application is made by the award holder or debtor for an order under section 66(1) of the Act to give permission to enforce and subject to the limited exceptions set out in the New York Convention as implemented by section 103 of the Act. Investment Treaty Awards are also enforced in a similar manner by virtue of the UK's membership of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention).

A defendant has the right to apply to set aside the enforcement order. However, case law has re-emphasised that refusals to enforce will only take place in clear cases where the grounds of section 103(2) of the Arbitration Act are met.

Law stated - 21 May 2025

Costs

35 | Can a successful party recover its costs?

Unless the parties agree otherwise, the tribunal should award the successful party its costs except where it appears not to be appropriate to the tribunal in the circumstances. In addition to costs, the unsuccessful party will also pay the arbitrator's fees and expenses, and any fees and expenses of the arbitral institution. Any agreement between the parties on cost allocation is valid only if made after the dispute in question has arisen and not at the time of entering into the arbitration agreement itself.

The parties are free to agree on which costs are recoverable, but in absence of an agreement it is up to the tribunal to award recoverable costs on such basis as it thinks fit. In doing so, the tribunal must specify the basis upon which it has acted and itemise costs awarded and the amount relating to each item. The tribunal's discretion in this area extends to whether the conduct of the parties affects the amount to be paid. The Act expressly provides that recoverable costs include the reasonable fees and expenses of the arbitrators unless otherwise agreed.

The court in *Essar Oilfield Services Ltd v Norscot Rig Management Pvt Ltd* [2016] EWHC 2361 (Comm) decided that third-party funding costs can sometimes be recovered in arbitration as 'other costs' of the parties under section 59(1)(c) of the Act. The successful claimant could recover all of its third-party funding costs, including a 300 per cent uplift, but the costs had to be reasonable for recovery. The court also held that costs recoverability in arbitration should not depend on what a court would allow in litigation under the CPR.

Law stated - 21 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

- 36** | What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation is popular in England and Wales. There are various institutions within the jurisdiction specialising in mediation services, notably the Centre for Effective Dispute Resolution. Other forms of ADR can also be preferred within certain industry sectors. Construction contracts notably commonly opt for adjudication by an independent adjudicator, resulting in a quick binding decision that can be appealed via litigation or arbitration.

Expert determination is another form of ADR. This allows a relevant expert to determine a technical or specialist issue that is in dispute. It is often used for disputes involving valuation, accounting, engineering or scientific matters. The expert's decision is usually contractually binding unless the parties agree otherwise. As there is no statutory framework for expert determination, the process is largely governed by the parties' agreement.

Commercial parties can also choose to resolve their dispute by early neutral evaluation (ENE). ENE is a form of ADR where a neutral third party provides an assessment of the merits of the case or specific issues in dispute. The evaluator is usually an expert in the field of the dispute or a senior lawyer with experience in the relevant area of law. The evaluator's opinion is not binding on the parties, but it can help them to narrow the issues, evaluate their positions, and facilitate a settlement. Like expert determination, ENE is most often used for complex or technical disputes that involve questions of law or fact, such as intellectual property, construction or professional negligence.

Law stated - 21 May 2025

Requirements for ADR

- 37** | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Parties are encouraged to consider ADR both before and during proceedings, with the potential of adverse costs being awarded for unreasonably failing to consider ADR. However, there is no hard and fast requirement for parties to litigation or arbitration to mediate unless this is required by the dispute resolution clause of the agreement.

The courts encourage parties to explore the use of ADR at all stages of the proceedings, including pre-action to avoid the need to issue a claim at all. From May 2024, for all new civil court claims filed in the County Court, attending a mediation session will become a required step in resolving a money dispute under £10,000. This will be a free, one-hour mediation

session with the HM Courts and Tribunal Service Small Claims Mediation Service. The scheme is administered under a new pilot PD51ZE which will run until May 2026.

In late 2023, the English Court of Appeal in *James Churchill v Merthyr Tydfil Borough Council* held that English courts have the power to stay proceedings and order the parties to engage in mediation. This power however is a matter for the court's discretion as to whether making such an order is proportionate to settling a dispute fairly, quickly, and at reasonable cost, and does not impair the essence of the right to proceed to a judicial hearing. In October 2024 the Civil Procedure Rules were [amended](#) to encourage the use of ADR and in [DKH Retail Limited & Others v-City Football Group Limited](#) [2024] EWHC 3231 (Ch), the High Court exercised these explicit new powers to compel the parties to attempt mediation shortly before trial, unlike in *Churchill* when mediation had been sought at an early stage.

On 3 May 2023, the UK signed the Singapore Convention on Mediation. After joining the Convention, the High Court will be able to enforce settlement agreements (if within scope) from mediations worldwide – there will be no need for a party to issue a separate breach of contract claim. This should boost foreign parties' confidence in commercial mediation. The Convention will take effect in the UK six months after ratification. Ratification was expected in late 2024 but at the time of writing this has not yet taken place. The ratification process required additional legislation to be drafted.

Law stated - 21 May 2025

MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

One of the most interesting features of the English legal system is the split between the work of solicitors, who tend to work directly with clients, and barristers who traditionally conduct the advocacy of a claim in court. This split is starting to erode as more solicitors gain Higher Rights of Audience to become solicitor advocates and are allowed to advocate in more complex cases. Arbitration does not share the distinction and many solicitors conduct advocacy on behalf of their clients in these cases.

Law stated - 21 May 2025

UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Following two consultations reviewing the Arbitration Act 1996 (the Act), the Law Commission in England & Wales issued a final report that, while acknowledging that the Act generally works well, and that no major overhaul is necessary or desirable, suggested some specific reforms. The goal of the changes is to ensure that the Act meets the needs of users, keeps pace with international developments in this area and that it continues to attract arbitrations to the UK. The resulting Act received Royal Assent in February 2025 and included significant measures such as:

- incorporation of an arbitrator's duty to disclose;
- provision of a power for arbitrators to dismiss claims or defences that have no real chance of success;
- a new framework for challenges under section 67 of the Arbitration Act 1996 (where the challenge claims that the arbitral tribunal had no jurisdiction);
- a new rule on the governing law that applies to an arbitration agreement (overturning the Supreme Court's decision in *Enka v Chubb*); and
- clarification of court powers to assist arbitral proceedings and to support emergency arbitrators.

There is no date yet as to when the 2025 Act will come into force.

In 2025, the Online Procedure Rules (Specified Proceedings) Regulations 2025 (SI 2025/536) were introduced to govern the practice and procedure for specific types of online court and tribunal proceedings. These Regulations mean the Online Procedure Rule Committee (OPRC) can make Online Procedure Rules across Civil, Family and Tribunal arenas. The purpose of these Regulations is to ensure the development of simple Online Procedure Rules that are accessible and fair, support the quick and efficient resolution of property and financial remedy disputes, and make greater use of innovative digital methods of dispute resolution.

The Regulations confirm that the digital space will be regulated by rules distinct from the CPR. The OPRC has also indicated that it will set rules to ensure that new digital services collect, handle, and share data properly, in line with HM Courts & Tribunals Service's ongoing property and family law reforms.

The CJC has conducted a full review of the Pre-Action Protocols (PAPs), publishing its interim report in November 2021, Part I of its final report in August 2023, and Part II in November 2024. Both final reports highlight a strong consensus that PAPs are crucial in enabling proportionate dispute resolution within a system where very few cases ever go to full judicial determination. Part I examines the Pre-action Practice Direction (PD) and details how PAPs support the civil justice system. Its recommendations include making PAPs mandatory (with sanctions for non-compliance), introducing a new General Pre-action Protocol in place of the Pre-action PD, and creating a separate Small Claims PAP for disputes worth £500 or less.

Part II focuses on litigation-specific protocols, explaining that certain PAPs – such as those covering personal injury, housing, judicial review, debt, construction and engineering, professional negligence, and media and communications – are ripe for reforms. The CJC also proposes creating two new PAPs for multi-track Business & Property Court claims and for child abuse claims, along with exempting parties who undergo formal

pre-action dispute resolution from post-issue mandatory mediation (while preserving a court's discretion to order mediation). For debt claims, the CJC recommends broader disclosure obligations in letters of claim, stricter requirements on creditors to identify a debtor's address, and incorporating the protocol into Money Claim Online. Having received these recommendations, the Civil Procedure Rule Committee must now decide how to implement them and shape the future approach to pre-action protocols.

The CJC Enforcement Working Group published its report on [Enforcement](#) in April 2025. The report highlighted the need for a more efficient, user-friendly system that balances a creditor's rights with the protection of vulnerable debtors. Among its key recommendations are the establishment of a single unified digital enforcement court to combine High Court and County Court enforcement mechanisms, new requirements for default judgments (such as proof of service and compliance with the Pre-Action Protocol for debt claims) to reduce unfair outcomes, and the immediate implementation of Part 4 of the Tribunals, Courts and Enforcement Act 2007 to facilitate enhanced information sharing and more streamlined enforcement.

The key next steps highlighted in the CJC's report include exploring deeper reforms to enforcement (such as considering a unified, possibly judicial officer-led model), implementing a single digital enforcement court that merges High Court and County Court procedures, and bringing Part 4 of the Tribunals, Courts and Enforcement Act 2007 into force to improve access to accurate financial information. The CJC will now review the report's recommendations.

From May 2024, for all new civil court claims filed in the County Court, attending a mediation session will become a required step in resolving a money dispute under £10,000. This will be a free, one-hour mediation session with the HM Courts and Tribunal Service Small Claims Mediation Service. The scheme is administered under a new pilot PD 51ZE and will run until May 2026.

Under the new simplified costs budgeting regime, multi-track claims valued under £10 million will require a costs budget, unless an exception applies or the court decides otherwise. The pilot schemes (PD 51ZG1 and PD 51ZG2) will apply to claims issued on or after 1 April 2025 and prior to 1 April 2028. PD 51ZG1 requires all parties in certain Business and Property Courts (except litigants in person) to file simplified budgets (Precedent Z) 21 days before the first CMC. For claims worth £1 million or more, full costs management only applies if the court deems it necessary. Claims under £1 million will also require the additional filing and serving of a budget discussion report (Precedent ZH) at least seven days prior to the case management conference, and the court will typically make a costs management order unless there is a compelling reason not to do so.

The Civil Procedure Rule Committee (CPRC) has proposed an amendment to CPR 5.4(C). Following a consultation on the changes a large number of concerns were raised and as a result the CPRC has decided to delay implementation of the change while it considers these.

In late 2023, the English Court of Appeal in *James Churchill v Merthyr Tydfil Borough Council* held that English courts have the power to stay proceedings and order the parties to engage in mediation. Following this judgment changes have been to the CPR to encourage the parties to engage in ADR and, in [DKH Retail Limited & Others v City Football Group Limited](#) [2024] EWHC 3231 (Ch), the High Court exercised these explicit new powers

to compel the parties to attempt mediation shortly before trial, unlike in *Churchill* when mediation had been sought at an early stage.

On 3 May 2023, the UK signed the United Nations Convention on International Settlement Agreements Resulting from Mediation (known as the Singapore Convention on Mediation). After joining the Convention, the High Court will be able to enforce settlement agreements (if within scope) from mediations worldwide – there will be no need for a party to issue a separate breach of contract claim. This should boost foreign parties' confidence in commercial mediation. The Convention will take effect in the UK six months after ratification. Ratification was expected in late 2024 but is yet to take place.

On 12 January 2024, the UK signed the 2019 Hague Judgments Convention. Ratification took place at the end of June 2024 and the Convention will come into force on 1 July 2025. It is designed to provide a reciprocal framework for the recognition and enforcement of national court judgments in civil or commercial matters and applies to judgments emanating from exclusive, non-exclusive and asymmetric jurisdiction clauses but only after the Convention enters into force. Regulations incorporating the Judgments Convention into domestic law have been laid before Parliament (Recognition and Enforcement of Judgments (2019 Hague Convention, etc) Regulations 2024), enacting the necessary amendments to the Civil Jurisdiction and Judgments Act 1982, and the relevant changes to CPR 74 and PD74A have been drafted. These will take effect from 1 July 2025 when the Convention comes into force.

Law stated - 21 May 2025

Bird & Bird

Jonathan Speed
Louise Lanzkron

jonathan.speed@twobirds.com
louise.lanzkron@twobirds.com

Bird & Bird

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LITIGATION

Court system

1 | What is the structure of the civil court system?

Vietnam's civil court system is organised into a four-tier structure to provide hierarchical dispute resolution and consistent application of law. The organisation and operation of the Vietnamese courts is currently regulated by the Law on Organisation of People's Courts 2024 and the Civil Procedure Code 2015. Below is some additional information on the organisation and operation of the system.

Hierarchy of courts

- District people's courts: these courts serve as the first instance courts for civil cases, handling disputes related to contracts, property, inheritance and compensation for damages, marriage and family, business and commerce, and labour. Most civil cases are resolved at first instance by the district people's courts.
- Provincial people's courts: these courts hear appeals from district people's courts and conduct first instance trials for more complex cases, including those involving foreign individuals, entities or assets abroad. They also supervise the adjudication of the district people's courts within their territorial jurisdiction.
- High people's courts: there are three high courts in Vietnam (located in Hanoi, Danang and Ho Chi Minh City), which act as appellate courts for cases from provincial people's courts within their jurisdiction. These courts handle cassation and reopening of civil cases resolved by lower courts within their jurisdiction.
- Supreme people's court: Vietnam's highest court that oversees the judicial system. It ensures consistent law application, handles cassation and reopening procedures, issues judicial interpretations, guides lower courts and unifies precedents for legal certainty.

Subdivisions by subject matter

The Law on Organisation of People's Courts 2024, effective from 1 January 2025, mandated the creation of specialised first instance courts for intellectual property and bankruptcy. However, six months later, these courts have yet to be established.

In addition to the aforementioned independent specialised civil courts of first instance, each court within the judicial system is internally divided into specialised divisions as determined by the National Assembly Standing Committee or the Chief Justice of the Supreme People's Court, depending on the specific court level. The specialised divisions within the civil field include:

- Civil court;
- Economic court;
- Family and juvenile court; and

- Labour court.

Hierarchy and mechanisms of appeal

Vietnam's civil court system follows a defined appellate framework:

- District people's courts' first instance decisions and judgments can be appealed to provincial people's courts.
- Provincial people's courts' first instance decisions and judgments are appealable to the relevant high people's court. Appellate decisions and judgments of the provincial people's courts may be reviewed by the Supreme people's court.
- High people's courts' decisions and judgments may be reviewed by the Supreme people's court through cassation or reopening procedures.

Composition of trial panels

- First instance trial: the panel consists of one judge and two people's assessors, or one judge in cases of a simplified procedure. In special cases, it may include two judges and three people's assessors.
- Appellate trial: the panel consists of three judges or one judge in cases of simplified procedure.
- Cassation and reopening by the High People's Court: the panel consists of three judges or all members of the Judges' Committee.
- Cassation and reopening by the Judges' Council of the Supreme People's Court: the panel consists of five judges or all judges of the Supreme People's Court.

Law stated - 28 May 2025

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

Vietnam employs an inquisitorial system in civil proceedings, wherein judges and people's assessors are actively involved in questioning the parties and scrutinising evidence.

Judges are required to ensure the lawful, objective and thorough resolution of disputes. This includes making efforts to uncover the material truth and safeguard the rights and obligations of the involved parties. In doing so, judges also ensure that proceedings are fair and conducted in accordance with legal norms.

Judge's role

Judges question witnesses and parties to clarify facts and evaluate evidence and ensure legal procedures are followed. Courts do not actively collect evidence; however, judges

supervise its presentation by the parties and may request clarification or supplementation where necessary.

Jury involvement

Vietnam does not have a jury system in civil cases.

However, people's assessors – being non-professional adjudicators – participate fully in first instance trials alongside professional judges, including evaluating evidence and deliberating on the outcome. Their role is to provide a community perspective on cases. They share equal voting rights with judges during panel decisions on the merits of a case.

Selection process for judges

- Judges must be Vietnamese citizens aged at least 28 years with a minimum of five years' legal experience.
- They must hold a law degree, undergo professional training in adjudication and successfully pass a judge selection examination.
- Judges are appointed for an initial five-year term. If re-appointed, their term of office continues until retirement or reassignment.
- Judges are appointed by the President of Vietnam at the request of the Chief Justice of the Supreme people's court.

Selection for people's assessors

To be a people's assessor a candidate must:

- be a Vietnamese citizen, aged from 28 to 70 years, have a reputation in the community, possess legal knowledge and have social awareness; and
- not currently be under the enforcement of disciplinary decisions in the form of reprimand, warning, salary reduction or demotion; not subject to disciplinary action in the form of dismissal, removal from office or forced resignation; not be under criminal prosecution or have been convicted by a court with a legally effective judgment.

A people's assessor's term aligns with that of the electing People's Council. Upon the Council's term end, the people's assessor continues until a new-term Council elects a new people's assessor.

People's assessors can be elected by the local People's Council after being introduced and recommended by the Vietnam Fatherland Front.

Diversity on the bench

Vietnamese law does not impose restrictions based on ethnicity, gender, religion or socioeconomic background in judicial appointments. This legal framework permits

candidates from diverse backgrounds to be considered for judicial office, provided they meet the formal qualifications.

Law stated - 28 May 2025

Limitation issues

3 | What are the time limits for bringing civil claims?

Under Vietnamese law, the time limits for bringing civil claims are governed primarily by the Civil Code 2015.

General rule for commencement of the statute of limitations

In accordance with the Civil Code, the statute of limitations for filing a civil claim is calculated from the date on which the plaintiff knew or should have known that their legitimate rights or interests were infringed. This subjective and objective standard places an obligation on the rights-holder to act within a reasonable time once they become aware – or are deemed to have been able to become aware – of a violation.

Time limits for specific types of civil claims

The statute of limitations varies depending on the nature of the civil matter in dispute. Notable examples include:

- Inheritance-related claims:
 - For real estate: 30 years from the date the inheritance is opened.
 - For movable property: 10 years from the date the inheritance is opened.
- Breach of contract or non-contractual claims: three years from the date on which the plaintiff knew or should have known of the damage and the responsible party.
- Requests to declare a civil transaction invalid:
 - Typically: two years from the date the person with the right to request knew or should have known of the grounds rendering the transaction invalid.

It is important to note that these limitation periods are not uniform across all claims and specific legislation may provide otherwise depending on the subject matter.

Civil matters not subject to time limits

Vietnamese law also sets out certain matters for which no statute of limitations applies. These include, but are not limited to:

- requests for protection of personal rights not associated with property (eg, dignity, honour);
- requests for protection of ownership rights, unless otherwise provided by law; and

- dispute over land use right as governed by the Land Law 2013.

Suspension of the statute of limitations

While parties are not permitted to agree to suspend the statute of limitations contractually, Vietnamese law does recognise certain objective circumstances that lead to a suspension of the limitation period. As per article 156 of the Civil Code 2015, these include:

- *Force majeure* events or objective obstacles, which prevent the plaintiff from filing a lawsuit or request within the limitation period.
- A *force majeure* event is one that occurs objectively, is unforeseeable, and insurmountable despite all necessary and possible measures.
- An objective obstacle is a condition that prevents a person from knowing that their rights have been violated or from exercising their rights.
- Lack of legal representation for vulnerable persons, including:
 - minors;
 - persons who have lost civil act capacity;
 - persons with cognitive or behavioural difficulties; and
 - persons with limited civil act capacity.

The limitation period is also suspended in cases where these persons have no substitute representative due to:

- death (if the representative is an individual);
- dissolution (if the representative is a legal entity); and
- other legitimate reasons that prevent the representative from continuing representation.

Agreement to suspend statute of limitations

Vietnamese law does not permit the parties to contractually suspend or modify the statute of limitations for civil claims. The only valid basis for suspension lies in the statutory exceptions expressly enumerated in the law.

Law stated - 28 May 2025

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In Vietnam, starting a civil lawsuit requires more than just filing a petition. The Civil Procedure Code 2015 mandates substantive and procedural steps to ensure claims are well structured, fit for jurisdiction and compliant with procedures.

Conditions for initiating a lawsuit

Article 186 of the Civil Procedure Code 2015 allows individuals and organisations to file a civil lawsuit if their legitimate rights and interests are infringed. Plaintiffs must have full civil procedural capacity and a direct interest in the dispute. This prevents misuse of judicial resources.

Further, claims must meet conditions under Vietnamese civil law, such as qualifying as a civil matter, being previously adjudicated and falling within the court's competence.

Jurisdictional requirements

Before filing suit, it is crucial to determine the correct jurisdiction. According to articles 26, 28 and 32 of the Civil Procedure Code 2015, jurisdiction is based on:

- subject matter: whether the case involves civil, family, commercial or labour law; or
- territory: whether the court is located where the defendant lives or where the contract was performed.

Choosing the wrong jurisdiction can lead to case dismissal or transfer, causing delays and inefficiencies.

Statute of limitations

The limitation period differs based on the nature of the claim. Plaintiffs should ensure their claim remains valid under the relevant statute of limitations. Generally, failing to commence proceedings within the designated time frame results in the claim's dismissal.

Mediation before filing a lawsuit

The Vietnamese legal system encourages the use of voluntary mediation before initiating court proceedings. Pre-litigation mediation serves multiple purposes:

- it promotes reconciliation and mutual agreement;
- it reduces the burden on the judiciary; and
- it preserves business or personal relationships between the parties.

Although not mandatory for every type of dispute, pre-action mediation is increasingly recommended, particularly in civil and commercial matters where ongoing relationships may be at stake.

Preparation of documents and evidence

Before submitting a claim, parties are expected to prepare and organise all necessary documents and evidence to substantiate their claims. This typically includes:

- contracts, agreements and transaction records;

- written communications, such as emails and letters;
- invoices, receipts and payment records; and
- witness statements or expert opinions, if applicable.

A well-supported claim increases the likelihood that the court will accept jurisdiction and proceed with the matter efficiently.

Pre-action disclosure and evidence requests

Although Vietnam does not have a comprehensive regime for pre-action disclosure as seen in certain common law jurisdictions, the Civil Procedure Code allows for limited pre-litigation evidentiary support. In certain cases, a party may request the court to issue a decision requiring the disclosure or submission of documents or evidence held by the other party. This is typically done to ensure that the plaintiff can present a complete case upon filing.

Such requests must be substantiated and are granted at the discretion of the court. The requesting party must demonstrate the relevance and necessity of the documents for the intended claim.

Law stated - 28 May 2025

Starting proceedings

- 5** | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

According to article 186 of the Civil Procedure Code 2015, civil proceedings commence when an individual, agency or organisation (the plaintiff) submits a lawsuit petition to a court with competent jurisdiction. The lawsuit petition must contain the following key components:

- the names, addresses and other identifying details of the parties involved;
- a clear statement of the legal and factual basis for the claim;
- the specific relief sought from the court; and
- evidence supporting the plaintiff's position, including contracts, records or other relevant documents.

The petition must be submitted in writing, either directly or through postal service, and must comply with the formal and substantive requirements set forth in article 189 of the Civil Procedure Code 2015.

Once the court receives the petition, it performs a preliminary review of the case file to determine whether the conditions for accepting the case have been satisfied. These include verification of jurisdiction, compliance with statutory requirements and the timely payment of court fees (where applicable). If the lawsuit meets the legal conditions, the court issues a decision to accept the case and inform the plaintiff to pay the court fee advance within

the statutory timeframe. Failure to do so may result in the petition being returned (article 191).

Notification to the parties

Upon acceptance of the case, the court is responsible for notifying the parties about the initiation of the proceedings. This includes:

- issuance of a written notice of case acceptance to the defendant and relevant parties;
- delivery of copies of the lawsuit petition and accompanying documentation to the defendant, enabling them to prepare a response; and
- specification of the time frame for the defendant to submit a statement of defence or additional documents.

The notification is conducted through formal service, typically via registered mail, court officers or other legally recognised means as stipulated under articles 170 to 175 of the Civil Procedure Code 2015. The law provides specific timelines and mechanisms to ensure that all parties are given adequate notice and opportunity to participate in the proceedings.

Court capacity and case management

Vietnam's judicial system has made significant strides in expanding access to civil justice; however, court capacity remains a pressing challenge. With a growing number of disputes being filed across civil, commercial and administrative domains, courts – particularly at the district and provincial levels – often face:

- high caseloads relative to the number of judges and support staff;
- delays in scheduling hearings or rendering decisions; and
- limited access to digital infrastructure in certain jurisdictions.

Recognising these challenges, the judicial system has pursued several institutional reforms, including:

- continued implementation of judicial training programmes for judges and court staff;
- digitisation of case management systems to streamline court operations; and
- legislative and administrative efforts to simplify procedural steps and promote early resolution of disputes through mediation and conciliation.

Despite these efforts, backlogs in some courts may still affect the speed at which disputes are listed and adjudicated. Further institutional strengthening and technological investment remain key priorities for easing capacity pressures.

Filing fees and court charges

The filing of a civil lawsuit in Vietnam is subject to court fees and charges, which are governed by Resolution No. 326/2016/UBTVQH14 of the Standing Committee of the National Assembly. The resolution provides for:

- fixed fees for non-property-related claims; and
- proportional fees based on the monetary value of the disputed property in property-related claims.

Examples include:

- for a non-property civil dispute: a fixed fee of 300,000 dong applies; and
- for a claim involving a property dispute valued from 6 million dong to 40 million dong: a fee of 5 per cent of the claim amount applies, with sliding rates applicable to higher-value disputes.

Court fees are payable at the time of case acceptance. Failure to pay the prescribed fee within the stipulated time frame may result in the petition being returned. In certain limited circumstances – such as where the plaintiff is financially disadvantaged or entitled to legal aid – fee exemptions or reductions may be granted, subject to statutory procedures and verification.

Law stated - 28 May 2025

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The procedure and timetable for adjudicating civil claims in Vietnam is governed by the Civil Procedure Code 2015, which outlines clear stages and statutory time limits for each phase of a civil case. From the filing of the initial claim to the final court decision, parties must comply with a range of procedural requirements and deadlines that ensure the orderly and efficient resolution of disputes.

Filing of lawsuit

Civil proceedings are commenced when the plaintiff submits a lawsuit petition to the competent people's court under article 186 of the Civil Procedure Code. The petition must contain essential details such as:

- identification of the parties (plaintiff and defendant);
- the legal basis and factual grounds of the claim;
- the relief sought; and
- accompanying evidence and documentation.

Within five working days of receipt, the court will review the petition and determine whether it satisfies the formal conditions for acceptance (article 191).

Notification of acceptance and service of documents



If the case is accepted, the court will issue a decision to accept the case and send it to the parties involved. According to article 196, the court must:

- serve a copy of the petition and supporting documents to the defendant; and
- notify relevant third parties if applicable.

The notification must generally be completed within three working days from the date the court issues its decision to accept the case.

Submission of defence and counterclaims

Upon receiving the court's notification, the defendant is entitled to file a statement of defence, which must be submitted within 15 working days of receipt of the case acceptance notice (article 199). The defence must respond to the claims made and may include legal arguments, factual rebuttals and supporting documents.

If the defendant wishes to assert a counterclaim, it must be submitted:

- alongside the defence statement; or
- within 15 working days from the date the defence was submitted (if not submitted simultaneously).

Counterclaims must comply with the same formal requirements as the initial lawsuit and must relate directly to the dispute or be admissible under the law on related claims.

Exchange of evidence and preparatory proceedings

Following receipt of all primary pleadings, the court may convene a meeting for checking the handover, access and disclosure of evidence, and for mediation purposes, as required under articles 208 to 211. This stage allows parties to clarify claims and defences, identify disputed issues and potentially reach a settlement.

If mediation is unsuccessful or deemed inappropriate, the court will proceed to schedule the first instance trial.

Time frame for first instance proceedings

The Civil Procedure Code sets out the maximum duration for handling cases:

- up to four months from the date of case acceptance for simple civil cases; and
- up to six months for complex cases or those involving foreign elements (article 203).

These periods may be extended by up to two months in exceptional circumstances, subject to approval by the Chief Justice of the court handling the case.

Court judgment and issuance of decision

Once the trial concludes, the court must issue a written judgment within 15 working days from the date of the conclusion of the trial hearing (article 266). The judgment must be reasoned, based on the facts established during the proceedings and the applicable law.

Law stated - 28 May 2025

Challenging the court's jurisdiction

7 | Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Under article 41 and article 192 of the Civil Procedure Code, the jurisdiction of a court to hear a civil matter is determined based on both subject-matter jurisdiction (which court level has the authority to resolve the dispute) and territorial jurisdiction (which geographic court is competent).

If a party believes that the case has been filed with a court lacking proper jurisdiction, it has the right to raise a challenge to jurisdiction. This must be done at the earliest stage of proceedings, typically within the period for filing the statement of defence.

The challenge may be based on various grounds, including :

- the dispute falls under the jurisdiction of a different court based on the subject matter or location;
- the parties have a valid jurisdiction agreement selecting a different court or arbitration body (if recognised under Vietnamese law); and
- the case involves foreign elements, and a foreign court or arbitral tribunal has exclusive jurisdiction under international agreements to which Vietnam is a party.

The court will review the jurisdictional objection before proceeding further with the case. If the objection is upheld, the court shall issue a decision to return the petition or transfer the case to the appropriate court, or terminate the proceedings if no competent authority exists under Vietnamese law.

Forum selection and arbitration clauses

Vietnamese courts respect forum selection clauses and arbitration agreements where they are valid and properly drafted. Under article 2(2) of Resolution No. 01/2014/NQ-HDTP, a court must return a lawsuit petition if the dispute falls under the jurisdiction of an arbitral tribunal due to a valid arbitration agreement.

If a party files a lawsuit despite an existing arbitration clause, the opposing party must raise this objection before the first hearing. Failure to do so may result in a waiver of the right to object, and the court may proceed with the trial.

Anti-suit injunctions (anti-suit orders)

The concept of anti-suit injunctions – orders preventing a party from initiating or continuing proceedings in a foreign jurisdiction – is not recognised under Vietnamese civil procedure. Vietnamese courts do not have statutory authority to issue such orders, nor do they entertain applications seeking to restrain foreign proceedings.

In practice, if a dispute is already pending before a foreign court or arbitral tribunal, and a related proceeding is filed in Vietnam, the Vietnamese court will:

- examine whether the dispute falls within its jurisdiction; and
- consider any valid forum selection or arbitration clause before accepting or rejecting the case.

However, there is no mechanism to seek injunctive relief in Vietnam to stop a party from pursuing proceedings in another jurisdiction.

Law stated - 28 May 2025

Case management

8 | Can the parties control the procedure and the timetable? Can they extend time limits?

Under the Vietnamese legal system, civil proceedings are primarily governed by the Civil Procedure Code 2015. While the court maintains the primary responsibility for managing the litigation process, parties to a civil dispute are entitled to participate actively in procedural matters and, to a certain extent, influence the timetable of proceedings. However, such influence is subject to strict judicial oversight.

Party involvement in case management

Pursuant to articles 48, 71, 72 and other relevant provisions of the Civil Procedure Code, the parties are granted the right to:

- present their opinions and procedural requests during the litigation;
- propose the collection and presentation of evidence; and
- request extensions or adjournments under valid circumstances.

Nevertheless, the court has exclusive authority to organise and manage the litigation, including setting procedural milestones, hearing schedules and deadlines. The judge plays a central role in ensuring the efficiency, fairness and legality of the proceedings, and any procedural proposal made by the parties must be considered and approved by the court.

Extension of procedural deadlines

The ability to extend time limits is regulated under article 203 of the Civil Procedure Code. Specifically:

-

time limits for procedural steps (such as filing responses, presenting evidence or submitting counterclaims) may be extended if a party provides a legitimate reason (eg, *force majeure*, illness, difficulties in gathering evidence); and

- the extension must be requested in writing and approved by the court prior to the expiry of the deadline.

The court will assess the reasonableness of the request based on the complexity of the case, the conduct of the parties and the interests of judicial economy and fairness. If no valid reason is provided or the request is untimely, the court may refuse the extension and the party may lose certain procedural rights.

Agreements between the parties

Vietnamese law allows for limited procedural flexibility through mutual agreement between the parties. For example:

- the parties may agree on certain deadlines for submission of documents or participation in mediation sessions; and
- any such agreement must not conflict with statutory rules and must receive judicial approval to be effective.

The court will only uphold procedural agreements that do not prejudice the rights of other parties or undermine procedural order.

Judicial discretion and safeguards

If a party believes that a court-imposed timetable is unrealistic or prejudicial, they may file a motion requesting adjustment. The court has discretion to review and, if appropriate, revise the timetable to ensure sufficient preparation time and a fair trial.

In practice, while the court strives to ensure procedural fairness, strict case management and increasing caseloads can result in limited flexibility, especially in busy jurisdictions.

Law stated - 28 May 2025

Evidence – documents

- 9** | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Vietnamese law requires the preservation of evidence. Article 107 of the Civil Procedure Code 2015 mandates that evidence must be submitted to the court promptly. The court preserves all submitted or collected evidence. If evidence cannot be submitted immediately, the possessor must preserve it.

Parties are not compelled to voluntarily disclose documents that may be unhelpful or detrimental to their own case. Each party is obligated only to provide evidence that supports their claims or counterclaims, as stipulated in article 91 of the Civil Procedure Code 2015.

However, if the court issues a request, the parties or relevant third parties must submit any documents or evidence in their possession, including those that may be unfavourable, pursuant to article 106 of the same Code.

Law stated - 28 May 2025

Evidence – privilege

10 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In Vietnamese civil proceedings, the concept of legal professional privilege – while not fully developed in the same manner as in common law jurisdictions – is not expressly codified but is partially reflected under the Civil Procedure Code 2015 through provisions related to confidentiality and the protection of certain categories of documents and information.

Absence of general legal privilege

Vietnamese law does not provide a general privilege that would exempt legal advice or communications between a lawyer and their client from disclosure in civil proceedings. Under article 94 of the Civil Procedure Code, parties are obligated to submit documents and evidence supporting their claims or defences, and article 109 requires that evidence be made publicly available during the trial, except where otherwise provided by law.

Recognised exceptions – confidential documents

However, clause 2 of article 109 identifies specific exceptions, allowing for the non-disclosure of documents that fall into the following categories:

- country's secrets;
- professional or business secrets;
- personal or family secrets; and
- cultural customs and traditions, where disclosure could cause harm or offence.

In such cases, documents may be kept confidential if a party requests non-disclosure and the court deems the request legitimate. If confidentiality is granted, both the court and the parties are obligated to protect the sensitive nature of those documents.

Advice from in-house and foreign lawyers

Currently, Vietnamese law does not expressly grant privilege to legal advice provided by in-house counsel, whether local or foreign. Communications between a company and its in-house legal department are not automatically protected from disclosure. However:

- if such advice involves trade secrets, strategic business information or internal communications that qualify as business secrets, it may be protected under article 109; and

- advice from foreign lawyers is not specifically addressed in privilege terms and would be treated in accordance with the general evidentiary and confidentiality rules under the Civil Procedure Code.

It should be noted that under Vietnamese Bar regulations, lawyers are under a professional obligation to maintain the confidentiality of client information. Nonetheless, this duty of confidentiality does not necessarily equate to evidentiary privilege in court proceedings.

Practical application and court discretion

In practice, parties may request the court to treat certain documents as confidential, especially where disclosure could:

- harm legitimate interests;
- breach third-party confidentiality obligations; and
- involve sensitive commercial or personal data.

The court has discretion to assess the necessity and legitimacy of such requests and may limit access or restrict public disclosure, but rarely will it fully exempt such documents from consideration in the case.

Law stated - 28 May 2025

Evidence – pretrial

11 | Do parties exchange written evidence from witnesses and experts prior to trial?

Vietnamese civil procedure law allows, and sometimes requires, written evidence from witnesses and experts before a trial. Articles 95, 102 and 106 of the Civil Procedure Code 2015 state that valid evidence includes written statements, expert conclusions and other documents. Such evidence must be submitted to the court during the preparatory stage for review and, under the principles of adversariality and equality, is typically disclosed to the opposing party. The court can order an official expert examination, which must be disclosed to all parties.

Law stated - 28 May 2025

Evidence – trial

12 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In the Vietnamese legal system, the presentation of evidence at trial plays a central role in ensuring that civil cases are resolved fairly and in accordance with the law. The Civil Procedure Code 2015 sets out specific regulations on how evidence is introduced, and how witnesses and experts may participate in the trial process.

Forms of evidence

According to article 94 of the Civil Procedure Code, evidence may take various forms, including:

- documentary evidence;
- physical exhibits;
- audio and visual materials;
- testimony of witnesses;
- expert conclusions;
- on-site examination results; and
- statements of involved parties.

Parties are entitled to present such evidence at trial, and the court is responsible for examining and evaluating its relevance and probative value when issuing a judgment.

Witness testimony

Witnesses play an important role in clarifying facts during the trial. As provided in article 91, the court may summon witnesses to testify orally at the hearing. Witnesses must truthfully state what they know about the case and may be subject to questioning by the court, the procuracy (if participating) and the involved parties.

The testimony of witnesses is recorded in the minutes of the trial and becomes part of the case file. If a witness is absent without a valid reason, the court may decide whether to proceed in their absence or postpone the trial depending on the importance of the testimony.

Expert evidence

In cases involving technical or specialised issues, expert witnesses may be invited or appointed by the court under article 92 to give their professional opinions. Experts are expected to prepare written reports and may also be summoned to appear in court to explain or clarify their conclusions.

Experts, like witnesses, may be questioned by the court and the parties. Their opinions are considered a form of evidence and are evaluated together with other case materials. The court is not bound by expert opinions but may rely on them where appropriate.

Trial procedure

During the hearing, the court facilitates the presentation of all relevant evidence. The parties are given equal opportunities to present, examine and respond to evidence, including questioning witnesses and experts. This adversarial structure ensures that the court can make decisions based on a comprehensive and balanced understanding of the case.

Transparency and fairness

Civil trials in Vietnam are generally conducted publicly, in accordance with article 15 of the Civil Procedure Code. The open nature of the trial ensures that evidence is reviewed transparently, and the rights of all parties are protected.

Law stated - 28 May 2025

Interim remedies

13 | What interim remedies are available?

Interim remedies in Vietnamese civil litigation

In the Vietnamese legal system, interim remedies (referred to as 'provisional urgent measures' under Vietnamese law) are legal tools that allow courts to temporarily preserve the status quo, protect the legitimate rights and interests of the parties, or prevent irreparable harm before a final judgment is issued. The Civil Procedure Code 2015 contains detailed provisions on the types of interim remedies available, their conditions and their procedures.

Types of interim remedies

Under article 114 of the Civil Procedure Code, the court may apply one or more provisional urgent measures at the request of a party or on its own initiative. Some of the most common interim remedies include:

- Asset freezing: blocking or seizing bank accounts, movable or immovable assets of the opposing party to ensure enforcement of a future judgment.
- Prohibiting certain acts: temporarily prohibiting the defendant or related parties from performing certain acts that may affect the outcome of the case.
- Compelling performance: ordering the temporary performance of certain actions such as the preservation of property or evidence.
- Temporary custody of disputed property: assigning custody of disputed assets to a neutral party.
- Suspending enforcement of an administrative decision: in cases where the legality of such a decision is being challenged.

Availability of freezing and search orders

- Freezing orders: Vietnamese law allows for freezing or attachment of assets under article 114 and related provisions, which serve a similar function to freezing injunctions in common law systems. These measures aim to prevent the dissipation of assets before a final judgment is issued.
- Search orders: Vietnamese civil procedure does not explicitly recognise the equivalent of 'search orders' as known in common law systems (eg, Anton Piller orders). However, courts may allow on-site inspections and evidence preservation

under articles 102 and 106, especially when there is a risk of evidence being lost or destroyed.

Interim remedies in support of foreign proceedings

Vietnamese law currently does not have specific provisions that allow courts to grant interim remedies solely in support of foreign proceedings. Provisional urgent measures are generally limited to cases filed and accepted within the Vietnamese judicial system. However, under international treaties or mutual legal assistance agreements to which Vietnam is a party, such cooperation may be possible in limited circumstances.

Application procedure

To request interim remedies, a party must submit a written application, accompanied by reasons and relevant evidence showing that the measure is necessary and urgent. According to article 133, the court must decide on the application within three working days. In urgent cases, the court may issue a decision immediately and allow the applicant to supplement documents later.

The applicant may also be required to provide security (eg, deposit a sum of money or assets) to cover any damages caused if the remedy was wrongfully applied.

Law stated - 28 May 2025

Remedies

14 | What substantive remedies are available?

Vietnamese law provides several substantive remedies in civil cases, but it does not recognise punitive damages in the same way as some common law jurisdictions.

Available remedies

There are the following substantive remedies in civil cases:

- **Compensatory damages:** courts award damages based on actual losses suffered by the injured party.
- **Penalty:** a pre-agreed sum of money that the party violating the obligation must pay the injured party. The penalty level is agreed upon by both parties, while in commercial and construction contracts, it is based on the value of the breached contractual obligation, which may not exceed 8 per cent or 12 per cent.
- **Specific performance:** courts may order a party to fulfil contractual obligations instead of awarding monetary damages.
- **Rescission:** contracts can be cancelled if there is fraud, duress or fundamental breach.

Punitive damages

Vietnam does not award punitive damages. Courts focus on actual compensation rather than punishment.

Interest on money judgments

Interest is payable on money judgments. The statutory interest rate is determined by the Civil Code and varies depending on the nature of the claim.

Law stated - 28 May 2025

Settlement

- 15** | Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

In the Vietnamese legal system, the settlement process through negotiation and mediation is not only permitted but also encouraged, as it aligns with the principle of promoting amicable resolution of disputes. The Civil Procedure Code of 2015 and Law on Grassroots Mediation 2013 establishes clear rules governing mediation, including the confidentiality of settlement discussions.

Court-encouraged mediation

Pursuant to article 10 of the Civil Procedure Code 2015, the court has an obligation to create conditions for the involved parties to conduct mediation and reach an agreement. This applies to most civil cases, except where the law prohibits mediation (eg, cases involving violations of public interest or rights that cannot be waived).

The court may organise mediation before opening the first instance trial, and in practice, many civil cases are resolved through court-facilitated mediation without proceeding to a full trial. Mediation can also take place outside the court, conducted by professional commercial mediators or through community-based mechanisms, subject to the parties' agreement.

Confidentiality of settlement discussions

Confidentiality is a cornerstone of the mediation process. Under article 4 of the Law on Grassroots Mediation, and articles 15 and 267 of the Civil Procedure Code, all discussions and content exchanged during mediation are strictly confidential. Neither the court nor any third party may disclose the content of mediation discussions without the consent of the parties involved. This confidentiality applies whether mediation is conducted by the court or by an external mediator.

Further, this provision ensures that statements or proposals made during mediation cannot be used as evidence against a party if the mediation fails and the case proceeds to trial. This

legal protection allows the parties to negotiate freely and openly without fear of prejudicing their legal position.

Recognition of settlement agreements

If the parties reach a successful agreement through mediation, the outcome must be recorded in writing and recognised by the court as per article 212 of the Civil Procedure Code. Once recognised, the settlement agreement carries the same legal effect as a court judgment and is enforceable through civil enforcement procedures.

The court will verify that the agreement is voluntary, not in violation of the law or social ethics and does not affect the legitimate rights of third parties. Upon approval, the court will issue a decision to recognise the agreement and terminate the litigation proceedings.

Encouragement of alternative dispute resolution

In addition to court-based mediation, the Vietnamese legal system also encourages out-of-court settlement mechanisms including commercial mediation under the Decree on Commercial Mediation 22/2017/ND-CP. These mechanisms are particularly popular in business and contractual disputes, and confidentiality is equally protected under these frameworks.

Law stated - 28 May 2025

Enforcement

16 | What means of enforcement are available?

Means of enforcement

Under articles 9 and 10 of the Law on Enforcement of Civil Judgments, civil judgments are enforced by specialised enforcement agencies. Available enforcement measures include:

- compulsory execution of monetary compensation, transfer or return of assets and fulfilment of other obligations as stated in the judgment or decision; and
- seizure and liquidation of property, garnishment of bank accounts, or enforcement against income or wages, depending on the nature of the obligation and the financial situation of the judgment debtor.

Voluntary compliance is encouraged initially, but if the party fails to comply within the legal time limit, coercive enforcement measures may be taken.

The enforcement process is typically initiated upon the request of the judgment creditor by filing an application with the competent civil judgment enforcement agency, accompanied by a legally valid judgment or decision.

Sanctions for non-compliance

If a party disobeys a court order or judgment, various sanctions can be imposed, depending on the level and nature of the violation.

Administrative sanctions

According to Decree No. 144/2021/ND-CP, individuals or organisations that intentionally fail to comply with court decisions may face administrative fines. The fine levels vary depending on the specific behaviour, such as obstruction of enforcement or failure to provide required information about assets.

Compulsory enforcement measures

The civil enforcement agency is authorised to take coercive measures to enforce the judgment. These may include:

- asset seizure or freezing, including bank accounts or real property;
- eviction in the case of unlawful occupation of real estate; and
- suspension of business activities in some commercial enforcement cases.

Such measures are taken after the deadline for voluntary compliance expires, and after the judgment enforcement officer completes the necessary procedural steps.

Criminal liability

In cases of serious or intentional obstruction of enforcement, criminal sanctions may be applied. Under article 380 of the Criminal Code 2015 (amended 2017), a person who fails to execute a legally effective court judgment may be prosecuted and face penalties, including fines, non-custodial reform or imprisonment, depending on the severity of the offence.

Enforcement procedure

To initiate enforcement, the judgment creditor must submit a written request to the competent Judgment Enforcement Department, together with the enforceable judgment or decision. Upon acceptance, the enforcement agency will issue a decision to enforce and carry out necessary procedures such as asset verification, notice to the debtor and application of enforcement measures.

Law stated - 28 May 2025

Public access

- 17** | Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Under article 15 of the Civil Procedure Code 2015, court hearings in civil cases are generally held in public. This ensures openness, transparency and the public's right to oversee judicial activities. Any individual may attend a public hearing, subject to the court's logistical capacity.

However, hearings may be restricted or closed to the public in the following circumstances:

- as prescribed in article 15, when the case involves state secrets, preservation of fine customs and traditions, protection of privacy, or family or business secrets;
- when required to protect minors or vulnerable persons; or
- where the public nature of the hearing may negatively affect public order or national security.

Even in private hearings, the judgment must still be publicly pronounced, unless doing so would disclose protected information.

Access to court documents

While Vietnamese law supports the principle of publicity in court activities, access to court documents is restricted to certain parties as listed below:

- parties to the case and their representatives have the right to access, read and copy case files (article 97);
- third parties who are not participants in the proceedings generally do not have access to pleadings, witness statements or orders unless permitted by the court; and
- according to article 109, certain documents (such as those relating to state secrets, personal privacy, business secrets or family matters) are protected and may not be disclosed.

Therefore, while the hearing may be public, access to case documents is typically limited to ensure the protection of lawful rights and interests of the involved parties.

Private hearings

Private hearings are allowed and regulated under article 15, which enables the court to close hearings in specific sensitive contexts, particularly when public disclosure could:

- endanger national security or social order;
- infringe upon personal or family privacy;
- violate customary values; or
- breach professional or business confidentiality.

The court will notify the parties if a case will be heard in private and record such determination in the trial minutes.

Preservation of sensitive documents

While the Vietnamese legal framework does not explicitly recognise a mechanism akin to 'confidentiality clubs', parties may request the court to apply protective measures for documents and evidence containing sensitive information.

Pursuant to clause 2, article 109 of the Civil Procedure Code, the court is responsible for ensuring that undisclosed information remains confidential and is only accessible to authorised individuals. Judges, court staff and other participants in the proceedings are required to maintain the confidentiality of non-public documents. Violations may result in disciplinary, administrative or even criminal penalties depending on the severity.

Law stated - 28 May 2025

Costs

18 | Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Pursuant to article 147 of the Civil Procedure Code 2015, the court has the power to order the payment of litigation costs, regardless of whether the case is resolved through trial or settlement, which include:

- court fees (both advance and adjudicated amounts); and
- costs for collecting evidence, witness expenses, expert assessment fees, translation costs and other necessary procedural expenses.

The court will allocate these costs depending on the outcome of the case, typically requiring the losing party to bear the relevant expenses, unless otherwise agreed by the parties or stipulated by law.

Assessment of costs

The assessment of court fees and litigation costs follows the provisions of Resolution No. 326/2016/UBTVQH14 of the National Assembly Standing Committee. The fees are calculated based on the nature and value of the dispute, with the following classifications:

- fixed fees for non-property-related claims; and
- proportional fees for claims involving property or monetary value.

The court may consider documented expenses submitted by the parties to determine additional litigation-related costs beyond court fees.

Vietnamese law does not require plaintiffs to provide security for the defendant's costs in civil cases. However, in arbitration proceedings, security for costs may be considered depending on the rules of the arbitration institution.

There have been no major recent changes in how courts rule on costs in civil claims. Costs rules apply uniformly across civil claims, though specific procedural rules may vary depending on the nature of the dispute.

Before the proceedings, the parties can negotiate cost-sharing agreements or opt for alternative dispute resolution (ADR) to minimise litigation expenses. During the proceedings, a party can request the court to limit unnecessary expenses or challenge excessive cost claims by the opposing party.

Law stated - 28 May 2025

Funding arrangements

19 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Vietnamese law does not expressly prohibit contingency fee arrangements, known as 'no win, no fee' agreements, but they are not formally recognised or regulated. Lawyers follow the Law on Lawyers 2006 (amended 2012) and guidance from the Vietnam Bar Federation, requiring legal fees to be agreed in writing based on workload, complexity, time spent and result achieved.

Result-based components can be included in a lawyer client agreement, but the total fee must be reasonable and lawful. Charging lawyers a percentage of the award as compensation may not comply with professional ethics rules.

Third-party litigation funding is not expressly regulated nor prohibited under Vietnamese law. However, there is no clear legal basis for third parties (eg, commercial funders) to invest in lawsuits and recover a share of the proceeds. Such arrangements may raise issues under civil, commercial or legal ethics laws, particularly in relation to:

- unauthorised legal representation;
- profit-sharing in litigation outcomes; and
- risks of conflict of interest or interference with justice.

Accordingly, litigation risk-sharing mechanisms, such as selling a portion of expected recovery or outsourcing litigation liability to third parties, remains a legally uncertain and uncommon in practice in Vietnam.

Law stated - 28 May 2025

Insurance

20 | Is insurance available to cover all or part of a party's legal costs?

The use of insurance to cover legal costs – whether for a party's own expenses or its potential liability for an opponent's costs – is not clearly regulated under current laws of Vietnam. However, there are certain considerations and developing practices relevant to this issue.

Availability of legal cost insurance

Currently, Vietnamese law does not expressly recognise or regulate legal expenses insurance (LEI). The Law on Insurance Business No. 08/2022/QH15 and guiding regulations issued by the Ministry of Finance primarily govern traditional insurance products, including life insurance, health insurance, property insurance and civil liability insurance. Specific insurance coverage for litigation costs – such as lawyers' fees, court fees or adverse costs – is not commonly available in the domestic insurance market.

Existing forms of liability insurance

While direct legal cost insurance is not widespread, some forms of professional liability insurance or directors and officers (D&O) liability insurance may include partial coverage for legal expenses incurred in defending claims. These policies, however, are not designed to cover litigation costs in civil or commercial disputes between private parties.

In practice, some multinational corporations operating in Vietnam may obtain LEI coverage through foreign insurers or group-level policies, but such arrangements are not governed by Vietnamese law and are typically structured offshore.

Insurance for opponent's costs

Vietnamese procedural law, particularly article 147 of the Civil Procedure Code 2015, allows the winning party to recover court fees and certain litigation costs from the losing party. However, there is no legal requirement or standard mechanism for a party to insure against the risk of being ordered to pay the opponent's costs. Nor is there a recognised insurance product in Vietnam that offers such coverage.

Contractual cost-sharing provisions

In commercial practice, parties may include contractual clauses allocating responsibility for legal costs in the event of a dispute. For example, a contract may specify that one party bears all legal costs arising from litigation. While this is not insurance per se, such cost-allocation clauses can provide a limited level of financial protection. However, their enforceability remains subject to judicial discretion and public policy considerations.

Prospects for development

As Vietnam continues to integrate into global legal and financial systems, and as the volume and complexity of commercial disputes increase, there may be future developments in LEI. Regulatory reform and market demand may lead to the emergence of domestic LEI products, especially for corporate clients and cross-border transactions.

Law stated - 28 May 2025

Class action

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21 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In the Vietnamese legal system, while there is no formal class action regime akin to those in common law jurisdictions, the Civil Procedure Code 2015 provides certain procedural mechanisms that allow for a form of collective redress when multiple litigants bring similar claims against the same defendant.

Joinder of claims and parties

According to article 42 of the Civil Procedure Code 2015, the court may join multiple cases or consolidate similar claims into a single proceeding under specific conditions:

- where multiple individuals have the same or substantially similar factual and legal grounds to join their claims in a single lawsuit;
- the consolidation must ensure that the resolution of the combined case is legally proper and does not prejudice the procedural rights of the parties; and
- the court may also split one case into multiple proceedings where the claims are dissimilar, or such separation is legally appropriate.

This procedural mechanism, often referred to as 'joinder of cases', serves as the closest equivalent to collective redress in Vietnam.

Limitations on class actions

While the joinder mechanism provides efficiency and consistency in adjudicating similar claims, it is fundamentally different from class actions as understood in jurisdictions like the United States. Key differences include the following:

- there is no provision for a representative plaintiff to act on behalf of an entire class without prior written authorisation or individual filing;
- each plaintiff must typically be named as a party and provide individual evidence; and
- court-approved settlements on a class-wide basis are not permitted.

Developments and practical use

To date, Vietnam has not introduced any legislative reforms aimed at establishing a formal class action regime. However, the use of joined proceedings has been seen in consumer disputes, labour-related claims and environmental matters, particularly where multiple plaintiffs are affected by the same underlying issue or conduct.

One notable example includes joined litigation involving multiple employees against an employer in labour disputes. Courts have also allowed joint actions in certain consumer protection cases, such as claims against manufacturers of defective goods or service providers with standard-form contracts.

Future prospects

Given the increasing complexity and scale of mass harm events – such as environmental incidents, data breaches or securities violations – there is a growing call among legal professionals and academics in Vietnam to consider a more structured collective redress mechanism. However, any legislative development in this area would require comprehensive procedural safeguards and policy consensus, which have not yet materialised.

Law stated - 28 May 2025

Appeal

22 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In Vietnam, the right to appeal in civil litigation is provided for in the Civil Procedure Code 2015, which outlines a multi-tiered judicial review system designed to ensure fairness and correct potential judicial errors. The procedure encompasses both first-level (appellate) and higher-level (cassation or reopening) reviews.

Grounds and circumstances for appeal

Under article 271 of the Civil Procedure Code 2015, litigants may appeal a first instance judgment or decision issued by a court of first instance if they believe that the judgment is unlawful or unjust. Specific grounds include:

- misapplication of substantive law: where the court has incorrectly applied legal provisions, leading to an erroneous ruling;
- improper assessment of evidence or facts: if the first instance court failed to adequately consider material evidence or misinterpreted facts;
- procedural violations: errors in procedure, such as failure to ensure the right of parties to be heard, improper service of process or other due process violations; and
- other circumstances where the decision adversely affects the legitimate rights and interests of a party.

The time limit for filing an appeal is generally 15 days from the date the party receives the judgment or decision (or seven days in the case of interlocutory rulings), pursuant to article 273 of the Civil Procedure Code.

Appellate procedure

Appeals are filed directly with the court that issued the first instance decision, which will then forward the case file to the court of appeal. The appellate court has the power:

- to affirm the lower court's ruling;
- to modify the judgment;

- to overturn the decision and remand the case for retrial; and
- to dismiss the case due to procedural violations.

Appeals are generally limited to issues raised by the appealing party, though the appellate court retains discretion to consider other legal or procedural issues if necessary to ensure lawful adjudication.

Right to further appeal (cassation and reopening)

A party dissatisfied with an appellate court's decision may initiate a further appeal under the cassation or reopening procedures, regulated by articles 326 to 345 of the Civil Procedure Code. These extraordinary remedies do not operate as a third level of appeal, but rather as a means to address serious judicial errors.

Cassation review may be triggered in the following circumstances:

- the judgment or decision contains serious legal errors;
- the judgment contradicts previous legally effective decisions on the same matter; and
- there has been a grave violation of procedural law affecting the case outcome.

A reopening procedure may be initiated under article 352 in cases where new facts or evidence emerge that were not previously available and could significantly affect the result of the case.

Cassation and reopening procedures are initiated by a petition to the Chief Justice of the Supreme people's court or the Chief Justice of the relevant high people's court, who may forward the case for review if deemed appropriate.

Law stated - 28 May 2025

Foreign judgments

23 | What procedures exist for recognition and enforcement of foreign judgments?

In Vietnam, the recognition and enforcement of foreign civil judgments and decisions are governed by the Civil Procedure Code 2015 and relevant international treaties to which Vietnam is a signatory. This legal framework is designed to ensure both respect for international legal cooperation and the protection of national legal principles.

Legal basis

The key provisions regulating the recognition and enforcement of foreign judgments are found in articles 423 to 429 of the Civil Procedure Code. These provisions establish the procedural steps, requirements and legal conditions for recognising judgments and decisions issued by foreign courts.

Recognition based on international treaties and reciprocity

According to article 425.1 of the Civil Procedure Code, the Vietnamese courts shall consider recognition and enforcement of a foreign court's judgment or decision in one of the following scenarios:

- Vietnam and the foreign country are parties to an international treaty on mutual legal assistance in civil matters that includes provisions on the recognition and enforcement of judgments; or
- there exists reciprocity in the recognition and enforcement of judgments between Vietnam and the foreign country, even if no formal treaty is in place.

In practice, Vietnam has entered into several bilateral treaties with countries such as France, China, Laos, Russia and others. These treaties typically set out conditions and procedures for recognition and enforcement, and Vietnamese courts will apply the terms accordingly.

Recognition in the absence of a treaty

If there is no international treaty or established reciprocity, Vietnamese courts may still consider recognition and enforcement under the Civil Procedure Code. In such cases, the requesting party must:

- submit a formal petition for recognition and enforcement;
- demonstrate that the judgment complies with Vietnamese legal standards; and
- provide certified and translated documents in accordance with legal requirements.

The court will examine the judgment to ensure that it does not violate the basic principles of Vietnamese law, public policy or the rights and interests of relevant parties, as required under article 424 of the Civil Procedure Code.

Conditions for recognition and enforcement

To be recognised and enforced in Vietnam, a foreign judgment must generally meet the following criteria:

- the judgment must be final and legally binding under the law of the issuing country;
- the foreign court must have proper jurisdiction over the case;
- the rights of the parties to be heard and to a fair trial must have been respected; and
- the judgment must not conflict with Vietnamese legal principles, especially those related to public order, morality and the fundamental rights of parties.

Procedural steps

The process for recognition and enforcement is as follows:

- file a petition with the provincial-level people's court where the respondent resides or has assets; and

- submit a certified copy of the judgment or decision, along with authenticated translations and evidence of the judgment's finality.

Then the court may conduct a hearing to assess the petition. If the court grants recognition, the foreign judgment can be enforced through Vietnamese enforcement authorities.

Right to appeal

As stipulated under article 429, the parties involved have the right to appeal the court's decision on recognition and enforcement, following the procedures applicable to civil judgments under Vietnamese law.

Law stated - 28 May 2025

Foreign proceedings

24 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In the Vietnamese legal system, the procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions are governed by the Civil Procedure Code of 2015 and are further shaped by international treaties on judicial assistance to which Vietnam is a party. While Vietnam does not have a specific statutory procedure for voluntary discovery as seen in common law jurisdictions, cooperation in cross-border evidence collection is possible under certain legal frameworks.

Legal framework

The key provisions applicable to judicial assistance in civil matters, including the collection of evidence for use abroad, are set out in Part 7 (articles 341 to 351) of the Civil Procedure Code 2015. These provisions govern how Vietnamese courts respond to requests from foreign courts or competent authorities regarding the collection, preservation and transmission of evidence.

International treaties and bilateral agreements

Vietnam is a party to various bilateral and multilateral treaties on mutual legal assistance in civil and commercial matters. These agreements commonly include provisions allowing for:

- the taking of oral testimony from witnesses;
- the collection of documents and other forms of evidence; and
- the service of judicial documents.

If a mutual legal assistance treaty exists between Vietnam and the requesting country, the procedures and requirements outlined in that treaty will take precedence.

Procedures in the absence of a treaty

In the absence of a treaty or agreement, foreign requests for evidence must still comply with Vietnamese law and sovereignty principles. Under article 342, foreign courts or authorities must send their request for judicial assistance through diplomatic or consular channels, or via other lawful means as provided by law or international practice.

The request should include:

- a clear statement of the subject matter and nature of the proceedings;
- the legal basis for the request;
- a description of the evidence sought (oral or documentary);
- details about the persons to be examined, if oral testimony is involved; and
- certified translations of the request into Vietnamese.

The Supreme people's court of Vietnam or the Ministry of Justice, depending on the nature of the request and applicable treaties, will forward the request to the appropriate people's court for execution.

Limitations and public policy considerations

Requests for the taking of evidence in Vietnam may be refused if they:

- violate the fundamental principles of Vietnamese law;
- affect national sovereignty, security or public order; and
- seek information protected by privilege or confidentiality laws (eg, state secrets, personal privacy, professional secrecy).

Vietnamese courts are also not obliged to compel production of documents or witness testimony beyond what is permitted under domestic procedural law.

Law stated - 28 May 2025

ARBITRATION

UNCITRAL Model Law

25 | Is the arbitration law based on the UNCITRAL Model Law?

The primary legal framework governing the conduct of commercial arbitration in Vietnam is the Law on Commercial Arbitration No. 54/2010/QH12, effective from 1 January 2011 (LCA). The LCA, comprising 13 Chapters and 82 articles, aims to harmonise Vietnam's arbitration framework with international standards and create an enforceable arbitration system appealing to foreign investors.

Vietnam is not officially recognised as a Model Law country; however, the LCA was designed with direct reference to the UNCITRAL Model Law's core principles including party autonomy, competence-competence and limited grounds for setting aside arbitral

awards. Compared to the UNCITRAL Model Law, the LCA incorporates provisions that differ in five main aspects.

- First, under the UNCITRAL Model Law, it applies to arbitration proceedings in international commercial disputes where the parties have agreed to arbitration and at least one party is from a member state different from the others. However, the LCA does not limit its scope to international arbitration or disputes involving foreign elements. It applies to both domestic and international arbitration without distinguishing between them. Additionally, for purely domestic disputes with no involvement of foreign elements, the LCA stipulates that the applicable substantive law is Vietnamese law and the language of arbitration is Vietnamese.
- Second, the LCA outlines certain qualifications for arbitrators such as possessing a university degree and at least five years of experience, and not currently working in courts, procuracies, investigation authorities or judgment enforcement authorities.
- Third, the LCA does not specify the conditions for granting an interim measure.
- Fourth, the LCA requires arbitral awards to be issued within 30 days of the final hearing. Ad hoc arbitral awards must also be registered with national courts before they can be enforced.
- Last, the LCA states that the grounds for setting aside awards are based on 'fundamental principles of Vietnamese law' rather than public policy under the UNCITRAL Model Law, and the award is issued based on any forged evidence provided by the parties.

Law stated - 28 May 2025

Arbitration agreements

26 | What are the formal requirements for an enforceable arbitration agreement?

Under the LCA, an arbitration agreement must be in writing and can be included as a clause in the contract or as a separate document.

According to article 16 of the LCA, the 'writing' requirement is met when:

- the agreement is made via telegram, fax, telex, email or other form provided by law;
- the agreement is established through written correspondence between the parties;
- a lawyer, notary public or competent organisation records the agreement in writing at the request of the parties, and the agreement is referred to during a transaction in documents like contracts, company charters or other documents containing an arbitration clause; or
- when a party mentions the agreement in statements of claim and defence without objection from the other party.

Law stated - 28 May 2025

Choice of arbitrator

- 27** | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Regarding the appointment procedure for arbitrators, the parties' explicit choices play an essential role in forming the arbitral tribunal. The tribunal may consist of one or more arbitrators based on the parties' agreement. According to article 39 of the LCA, if neither the arbitration agreement nor any applicable rules specify the number of arbitrators, the tribunal will comprise three arbitrators.

The LCA outlines distinct procedures for institutional and ad hoc arbitrations. In institutional arbitration, article 40 of the LCA differentiates between party-appointed arbitrators and chairperson selection as follows.

- For party-appointed arbitrators: the plaintiff appoints one arbitrator, and the respondent appoints another within 30 days of receiving the request. If the respondent fails to appoint an arbitrator, the chairman of the arbitration centre will designate one within seven days after the deadline.
- For chairperson selection: the two appointed arbitrators must jointly select a third arbitrator as chairperson within 15 days. If they cannot agree, the chairman of the arbitration centre will appoint the chairperson within seven days.

In ad hoc arbitrations, article 41 of the LCA stipulates similar timelines and procedures for party-appointed arbitrators and chairperson selection. However, if no agreement is reached, a competent court shall intervene to designate an arbitrator or chairperson upon the request of one or all parties. Within seven days of receiving the parties' request, the president of the competent court shall assign a judge to designate an arbitrator and notify the parties accordingly.

The LCA imposes stringent restrictions on challenging the appointment of an arbitrator, requiring clear evidence of bias, conflicts of interest or lack of impartiality. These safeguards maintain the integrity of arbitration proceedings while balancing party autonomy with judicial oversight. Specifically, pursuant to article 42 of the LCA, an arbitrator may be challenged under the following circumstances: the arbitrator is a relative or representative of one party; the arbitrator has a direct interest in the dispute's outcome; there are clear grounds demonstrating that the arbitrator lacks impartiality or objectivity and the arbitrator previously acted as a mediator, representative or lawyer for one party in the same dispute unless explicitly consented to by both parties.

These conditions align with the guidelines set out in the International Bar Association Guidelines on Conflicts of Interests in International Arbitration (IBA Guidelines).

Law stated - 28 May 2025

Arbitrator options

- 28** | What are the options when choosing an arbitrator or arbitrators?

The LCA allows parties considerable flexibility in selecting arbitrators from a varied pool, suitable for handling complex arbitration cases. It emphasises party autonomy by permitting parties to choose candidates with appropriate qualifications and experience. Parties may refer to lists from recognised arbitration institutions or anyone eligible as arbitrators in Vietnam.

The Vietnam International Arbitration Centre (VIAC) is the leading arbitration institution in the country, maintaining a list of qualified arbitrators with significant domestic and international experience and expertise. This includes numerous foreign arbitrators from different nationalities, providing diverse perspectives and knowledge for cross-border transactions.

Pursuant to article 20 of the LCA, to serve as an arbitrator in Vietnam, individuals must have full civil legal capacity (legal authority to perform the role), a university degree and relevant experience (a degree and at least five years of experience in a relevant field), exceptional expertise (highly specialised qualifications or extensive practical experience can substitute for the five-year requirement. This qualification applies to special cases). In addition, arbitrator candidates must not fall into either of the following cases: incumbent judges, procurators, investigators, enforcement officers or civil servants of people's courts, people's procuracies, investigative agencies or judgment enforcement agencies; or the accused, defendants, persons serving criminal sentences or having served the sentences but with unremitted criminal records.

Law stated - 28 May 2025

Arbitral procedure

29 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Law on Commercial Arbitration (LCA) includes procedural requirements for arbitration, balancing party autonomy with mandatory safeguards such as strict timelines, language mandates, judicial oversight and special rules for ad hoc arbitration. Influenced by the UNCITRAL Model Law, it incorporates provisions tailored to Vietnam's legal context, promoting fairness, transparency and efficient dispute resolution in line with domestic and international standards.

Vietnamese law mandates several specific procedural aspects as follows.

- First, written arbitration agreements: arbitration agreements must be in writing, as defined under article 16 of the LCA. This includes electronic communications, references to documents containing arbitration clauses or exchanges of pleadings.
- Second, language for domestic disputes: for purely domestic disputes (without foreign elements), Vietnamese is the mandatory language for proceedings (article 10 of the LCA).
- Third, arbitrator qualifications: arbitrators must possess full civil legal capacity as prescribed by the Civil Code 2015 and hold a university degree and have at least five years of professional experience. Active judges, prosecutors, enforcement officers



and individuals with criminal involvement are barred from serving as arbitrators (article 20 of the LCA).

- Fourth, award issuance: tribunals must issue awards within 30 days of the final hearing (article 60 of the LCA).
- Last, ad hoc awards: within one year after an arbitral award is issued, the party must request registration of an award to the competent court. After receiving the request for registration of the arbitral award, the court shall register or refuse to register the award (article 62 of the LCA).

Law stated - 28 May 2025

Court powers to support the arbitral process

30 | What powers do national courts have to support the arbitral process before and during an arbitration?

Under Vietnam's LCA and Civil Procedure Code 2015, national courts facilitate arbitration processes. Courts may intervene in specific situations:

- refusal to accept cases with arbitration agreements: courts will refuse to accept cases if an arbitration agreement exists unless the agreement is invalid or unenforceable (article 6 of the LCA);
- appointment and change of arbitrators in ad hoc arbitration: if parties cannot agree on arbitrators or a chairperson, the court will appoint them upon request (articles 41 and 42.4 of the LCA);
- challenge to the tribunal's jurisdiction: parties can challenge the validity and applicability of the arbitration agreement in court (article 44 of the LCA);
- assistance in collecting evidence: if needed evidence cannot be collected by the tribunal or parties, they may request the court to order submission (article 46.5 of the LCA);
- assistance in summoning witnesses: the arbitral tribunal can ask the court to summon witnesses who fail to appear without valid reasons (article 47.2 of the LCA); and
- ordering interim measures: courts can grant interim measures to preserve evidence, protect assets or maintain status quo as requested by disputing parties (article 49.2 of the LCA and article 114 Civil Procedure Code 2015).

Vietnamese legislation does not contain any explicit provisions permitting arbitration agreements to override court jurisdiction.

Law stated - 28 May 2025

Interim relief

31 | Do arbitrators have powers to grant interim relief?

Under the LCA, arbitral tribunals in Vietnam can grant interim relief during arbitration proceedings. Article 49 of the LCA lists the types of interim measures that tribunals can order upon a party's request including prohibiting any change in the status of assets under dispute; prohibiting or forcing any disputing party to commit one or more certain acts to prevent acts which adversely affect the process of arbitration proceedings; distraining assets under dispute; requesting preservation, storage, sale or disposal of any asset of one disputing party or all disputing parties; requesting temporary money payment between the parties; and prohibiting transfer of the rights to assets under dispute.

Arbitrators can grant interim relief with some limitations: they can only issue binding orders to parties within the arbitration agreement and cannot affect third parties. If a party has already sought relief from a court, the tribunal cannot grant similar relief, and certain measures remain exclusively under court jurisdiction.

Law stated - 28 May 2025

Award

32 | When and in what form must the award be delivered?

The LCA and institutional rules provide clear guidelines regarding the timing, form and content of arbitral awards. According to article 61.3 of the LCA, an arbitral award must be issued either immediately at the meeting or within 30 days after the conclusion of the final hearing. Arbitral awards must be in writing and must include the following details: date and place of issuance; names and addresses of the plaintiff and respondent; names and address of arbitrators or sole arbitrator; summary of claims, counterclaims and issues in dispute; grounds for issuing the award (unless parties agree otherwise); results of dispute resolution; time limit for enforcement; allocation of arbitration costs and other relevant expenses; and signatures of all arbitrators or the sole arbitrator. An arbitral award shall be sent to the parties immediately after the date of its issuance. The parties may request the arbitration centre or ad hoc arbitration council to issue copies of the arbitral award. An arbitral award is final and takes effect on the date of its signing (article 61 of the LCA).

Law stated - 28 May 2025

Appeal or challenge

33 | On what grounds can an award be appealed or challenged in the courts?

Under the LCA, an arbitral award is final with respect to the merits of the case. Consequently, it constitutes *res judicata* and cannot be appealed on the merits to another arbitral tribunal or any court. Any agreement by the parties allowing for the appeal of the arbitral award may likely be deemed invalid.

However, arbitral awards can be annulled in courts on specific statutory grounds. These grounds align with international standards but include local adaptations.

While arbitral awards cannot be appealed, they may be annulled under specific circumstances as stipulated in article 68 of the LCA. These circumstances include the absence of an arbitration agreement or the invalidity of the arbitration agreement; the composition or procedures of the arbitral proceedings being non-compliant with the parties' agreement or the law; the dispute falling beyond the arbitration council's jurisdiction; if an arbitral award contains details beyond the arbitration council's jurisdiction, such details shall be annulled; the evidence provided by the parties on which the arbitration council bases its award being counterfeit; an arbitrator receiving money, assets or other material benefits from one disputing party, thereby affecting the objectivity and impartiality of the award; and the award contravening the fundamental principles of Vietnamese law.

A petition to set aside an award must be filed with the competent court within 30 days of receiving the award. If the petition is based on a correctable error by the arbitral tribunal, the court may adjourn the petition for up to 60 days for the tribunal to rectify the errors (article 71.7 of the LCA).

Law stated - 28 May 2025

Enforcement

34 | What procedures exist for enforcement of foreign and domestic awards?

In Vietnam, a final arbitral award has the same legal status as a court judgment and is enforced according to the Law on Enforcement of Civil Judgments without needing court approval. For an ad hoc award to be enforced, it must be registered at the competent court within one year of issuance (article 62 of the LCA and article 13 Resolution No. 01/NQ-HDTP dated 20 March 2014). If not registered in time, it cannot be enforced by the state agency. Both institutional and ad hoc awards have a five-year limit for enforcement requests (article 30.1 of the LCA).

Vietnamese law delineates distinct enforcement mechanisms for foreign versus domestic arbitral awards. Under article 65 of the LCA, parties are obligated to voluntarily execute arbitral awards, irrespective of the award type.

In accordance with the LCA, a domestic award must be voluntarily executed by the award debtor. If the time limit for executing the domestic award expires without it being set aside by the competent court or voluntarily carried out by the award debtor, the award creditor is entitled to request the state enforcement agency to enforce the award.

The New York Convention has been ratified by Vietnam and has been incorporated into Vietnamese national law in the Civil Procedure Code 2015. Vietnam, however, has made three reservations, including that the award sought to be recognised and enforced is made in the territory of another contracting state; the disputes arises out of a legal relationship, contractual or not, and is deemed as 'commercial' under Vietnam laws; and for awards made in non-contracting states, Vietnam will apply the New York Convention to the extent that the non-contracting state does the same on the basis of reciprocity.

Under the New York Convention, foreign arbitral awards recognised and enforced by Vietnamese courts have the same legal effect as decisions made by Vietnamese courts. Foreign arbitral awards are defined as final decisions resolving the entire dispute.

Accordingly, interim orders or partial awards are not recognised separately. Applications for recognition and enforcement of foreign awards in Vietnam must be submitted within three years from the date the award became legally effective (article 451 of Civil Procedure Code).

Recognition and enforcement may be refused under article V(1) of the New York Convention. Decisions on recognition or non-recognition of foreign arbitral awards can be appealed and retried (articles 461 and 462 of the Civil Procedure Code). Recognition typically takes six months at the first instance court and two months at the appeal court.

The Civil Procedure Code improved the process for recognising and enforcing foreign arbitral awards. It aligns with the New York Convention but splits certain sub-clauses into separate grounds. For example, article V(1)(e) is divided into articles 459(e) and (g). The opposing party must prove the grounds for resistance, shifting the burden of proof away from the petitioner. Petitioners need only submit originals or certified copies of the award and relevant agreements. During any suspension of arbitration proceedings, judges must expedite the removal of causes and resume proceedings once resolved.

A decision to recognise or refuse an award can now be appealed. The Civil Procedure Code has given the appeal panel authority to cancel the first instance court's decision and send the case back for re-examination under article 462.5.

Law stated - 28 May 2025

Costs

35 | Can a successful party recover its costs?

Article 34 of the LCA governs arbitration fees, which encompass the revenue generated through dispute resolution services provided via arbitration. The law enumerates these fees comprehensively, including remuneration, travel and additional expenses incurred by the tribunal, charges for expert consultation and other assistance requested by the tribunal, administrative fees, charges for appointing ad hoc arbitrators by the arbitral institution at the request of the disputing parties and charges for utilising other services offered by the arbitral institution.

Arbitration fees are determined by the arbitral institution or tribunal. Vietnamese law stipulates that the losing party is responsible for arbitration fees unless the parties have agreed otherwise, the rules of arbitration specify differently or the tribunal allocates the fees differently. Although the law generally follows a straightforward approach to cost allocation (eg, not considering partial losses or wins), it grants the tribunal discretion in allocating these arbitration fees, as indicated by the third exception.

Vietnamese law regulates arbitration fees but not legal and other party-incurred costs like those for experts. These costs are usually the largest components of arbitration. Since Vietnamese civil procedure rules do not typically award such costs (except in limited disputes like intellectual property), each party bears its own costs. Arbitration institutions have integrated these expenses into their rules as 'legal costs or other reasonable expenses', separate from arbitration costs prescribed by law. Article 36.2 of the VIAC Rules allows the tribunal to allocate legal costs or expenses incurred by one party to the other.

The tribunal has discretion in this allocation, often applying the 'costs follow the event' approach, where the losing party pays the expenses.

The determination of these costs remains unclear. Domestic arbitral tribunals often require extensive proof of costs, influenced by Vietnamese law principles, which only allow recovery of actual and direct losses. Tribunals typically ask for evidence like tax invoices, remittance slips, timesheets and legal service agreements.

In addition, due to the practice of no further evidence being admitted after the final hearing, parties typically settle all arbitration-related fees before the hearing to ensure proof of costs is available. Separate cost submissions are uncommon in Vietnam.

Accordingly, parties should coordinate with their counsel and experts on cost settlement early to avoid exclusion from awards. Counsel in Vietnamese domestic arbitrations should be cautious in handling cost claims as they differ from international arbitration practices. As disputes become more complex, preparing evidence of costs can become an important concern before the hearing.

Law stated - 28 May 2025

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

36 | What types of ADR process are commonly used? Is a particular ADR process popular?

In Vietnam, there are three common alternative dispute resolution (ADR) methods: negotiation, mediation and arbitration.

Article 317 of the Commercial Law 2005 states that negotiation is one way to resolve commercial disputes, alongside mediation, arbitration and litigation. Negotiation has been a fundamental form of dispute resolution throughout human history. It is widely used in almost all early-stage conflicts. However, it often lacks effectiveness because parties are reluctant to compromise or accept losses. Additionally, without binding enforcement mechanisms, negotiations frequently fail to produce satisfactory outcomes, leading to court litigation or other ADR methods.

Mediation plays a crucial role in international dispute resolution, as noted in the United Nations Charter and various Vietnamese legal documents such as the Commercial Law and Civil Procedure Code. Vietnam has 10 commercial mediation centres staffed with experienced mediators. These mediators help parties negotiate and find mutual ways to resolve disputes, reducing the need for the third-party involvement often found in arbitration. In civil proceedings, parties can choose commercial mediation at any point during the dispute resolution process, as per article 6 of Decree No. 22/2017/ND-CP on Commercial Mediation. Mediation principles in courts are outlined in article 215.1 of the Civil Procedure Code, where courts facilitate agreements during the first instance trial preparation period, except for cases exempt from mediation. Mediation includes non-litigation mediation (mediators suggest solutions without making decisions; agreements are voluntarily

followed) and litigation mediation (conducted in courts or arbitration centres; agreements are enforced like judicial decisions).

The Ministry of Justice of Vietnam reports about 1,000 arbitrators at 45 arbitration centres, including experienced foreign arbitrators. Vietnam International Arbitration Centre (VIAC) handles nearly 50 per cent of arbitration cases in Vietnam. The primary legal framework governing arbitration in Vietnam is the Law on Commercial Arbitration No. 54/2010/QH12, which came into effect on 1 January 2011 (LCA). Arbitration activities in Vietnam include disputes arising from sales contracts as well as those in various other fields such as insurance, information technology, construction, distribution, agency and energy, etc. Commercial arbitration is widely used as an ADR mechanism due to its ability to produce a binding award enforceable both domestically and internationally through instruments like the New York Convention.

Law stated - 28 May 2025

Requirements for ADR

37 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Vietnamese law encourages the use of ADR methods to resolve disputes. However, there is no mandatory legal requirement for parties to litigation or arbitration to consider ADR before or during proceedings. Courts and tribunals generally cannot compel parties to participate in ADR unless it has been contractually agreed upon by the parties or is specifically required by procedural rules.

In practice, many commercial contracts in Vietnam include multi-tiered dispute resolution (MDR) clauses, which require parties to attempt negotiation or mediation before initiating arbitration or litigation. If a party fails to comply with these pre-arbitral requirements, the other party may challenge the admissibility of the arbitration or seek annulment of the arbitral award. However, Vietnamese courts have issued conflicting decisions on this issue. Some courts have ruled that non-compliance with MDR clauses does not invalidate the arbitration process (eg, Decision No. 526/2013/KDTM-QD). Others have held that MDR clauses must be respected, and failure to comply can result in annulment of the award (eg, Decision No. 10/2014/QD-PQTT).

Under the Law on Mediation and Dialogue at Court 2020, courts are required to encourage parties to engage in mediation before proceeding with litigation. However, participation in mediation is voluntary, and parties can decline without penalty.

In court proceedings, judges may refer cases to court-annexed mediation centres but cannot compel parties to settle through mediation. If mediation fails, the case proceeds to trial.

Under article 58 of the LCA, arbitral tribunals may attempt conciliation during arbitration proceedings if both parties agree. However, participation in conciliation remains voluntary, and parties can reject settlement proposals without affecting their rights in arbitration.

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MISCELLANEOUS

Interesting features

- 38** | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Vietnamese courts can cancel arbitral awards that violate fundamental principles of Vietnamese law, as stated in article 14.2.dd of Resolution No.01/2014/NQ-HDTP. If foreign arbitral awards contravene these principles, the court may refuse enforcement or non-recognition requests in Vietnam. This means foreign awards must comply with basic rules for creating and enforcing Vietnamese laws.

In 2024, the People's Court of Ho Chi Minh City annulled three arbitral awards on the grounds that they were contrary to fundamental principles of Vietnamese law.

The first case, Decision No. 41/2024/QD-PQTT dated 19 March 2024, involved a construction dispute. The tribunal had upheld the contractor's claims for outstanding payments against the project owner. However, the court found that the tribunal had breached the principles of objectivity and equality by failing to allow the sole authorised representative of the respondent to present their arguments.

In the second case, under Decision No. 69/2024/QD-PQTT dated 3 May 2024, the court noted procedural errors in the awarding of late-payment interest. The tribunal had based its decision on the report of a single bank rather than gathering data from at least three commercial banks as mandated by article 306 of the Commercial Law and guiding resolution No. 01/2019/NQ-HDTP of the Council of Judges of the Supreme court. Further, the tribunal applied an interest rate for US\$-denominated loans to an amount claimed in euros, leading to the conclusion that the award violated the principle of equality of parties.

The third case concluded under Decision No. 97/2024/QD-PQTT dated 30 May 2024, concerned a dispute over sales contracts. The court determined that social distancing measures due to the covid-19 pandemic constituted an objective impediment preventing the plaintiff from initiating arbitration. Consequently, the period during which these measures were effective should be excluded from the calculation of the statute of limitations. The court ruled that the award conflicted with fundamental principles of Vietnamese law regarding the determination and exclusion periods of the statute of limitations.

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UPDATE AND TRENDS

Recent developments and future reforms

- 39** | What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

In June 2024, the Ministry of Justice released a proposal for amendments to the Law on Commercial Arbitration No. 54/2010/QH (LCA) prepared by the Vietnam Lawyers Association (VLA). The dossier includes findings on LCA implementation and outlines four main policy areas including expansion of arbitrable disputes (disputes in all fields may be referred to arbitration unless prohibited by law); updating arbitration procedures (aligning with the UNCITRAL Model Law, including more flexible arbitration agreement forms, clarifying notice procedures, introducing emergency arbitration and removing the statute of limitations provision); expanding arbitral tribunal powers (adding provisions similar to article 19 of the UNCITRAL Model Law, allowing tribunals to conduct arbitration as they deem appropriate); and increasing award enforceability and reducing set-asides (proposing that court decisions to set aside awards be subject to cassation or Supreme court pre-approval). The VLA initially aimed for adoption by October 2024, but the timeline for approval remains uncertain.

The 2024 Land Law introduces arbitration as an option for settling disputes over land use rights. This update aligns Vietnam's land law with international standards and addresses current needs. Due to its unique characteristics compared to court trials, applying arbitration in practice requires analysing and understanding the relevant provisions of the Land Law and arbitration law.

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CDR Counsels

Ha Thi Thu Duong
Nguyen Thi Hai Chi
Pham Duy Nghia
Nguyen Vuong Minh Ngoc

ha.duong@cdrcounsels.com
haichi@cdrcounsels.com
nghia.pd@cdrcounsels.com
ngoc.nvm@cdrcounsels.com

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