

SINGAPORE

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COMMERCIAL LITIGATION
AND CROSS-BORDER ENFORCEMENT

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1. What is the structure and organisation of local courts dealing with commercial claims? What are the main procedural rules governing commercial litigation?

Commercial claims are litigated in the State Courts and in the Supreme Court. The State Courts comprise:

- the Magistrates' Court, which hears disputes involving claims up to SGD 60,000; and
- the District Court, which can hear disputes for claims up to SGD 250,000.¹

If a claim exceeds SGD 250,000 in value, then a party must commence such action in the Supreme Court² unless otherwise agreed. Such a claim would be brought, at first instance, with the General Division of the High Court. Any appeal from the decision at first instance will generally be heard by the Appellate Division of the High Court. In certain situations, the appeal can be heard by the Court of Appeal, which is the apex court in Singapore. The Fourth, Fifth, and Sixth Schedules of the Supreme Court of Judicature Act set out the instances when such appeals can be made, and in which court it should be brought.

The Supreme Court is also home to the Singapore International Commercial Court (SICC).³ The SICC was designed to deal with transnational commercial disputes, which are heard by a specialist panel of local and international judges.

The civil procedure rules in the State Courts and Supreme Court were recently revamped with the introduction of the Rules of Court (ROC) 2021. The ROC 2021, which replaces ROC 2014, seeks to achieve, amongst other things, expeditious and cost-effective proceedings. The introduction of the ROC 2021 also brought with it changes to the court structure: the Appellate Division of the High Court was introduced, reducing the number of appeal cases heard by the Court of Appeal. The procedural rules for the SICC are separately provided for, and were also recently amended by way of the SICC Rules 2021.

2. What pre-action considerations apply?

Certain types of claims brought in the State Courts require parties to comply with pre-action protocols,⁴ such as:

- personal injury claims;
- non-injury motor accident claims; and
- defamation claims.

However, claims of a similar nature or otherwise brought in the Supreme Court do not have such requirements.

Under ROC 2021, a party can apply to court under Order 11 rule 11 for the production of documents and information, before the commencement of proceedings. A party may want to do so for the following reasons:

- to identify possible parties to any proceedings;
- to trace a party's property; or
- for any other lawful purpose in the interests of justice.

¹ State Courts Act 1970 (2020 Revised Edition), see sections 2 and 3.

² Supreme Court of Judicature Act 1969 (2020 Revised Edition).

³ Supreme Court of Judicature Act 1969 (2020 Revised Edition), see Part 3, Division 3.

⁴ State Courts Practice Directions 2021.

The concept of pre-action interrogatories, which was available under ROC 2014, has since been abolished.

Parties commencing litigation under the new ROC 2021 should also bear in mind the new procedural mechanism of the Single Application Pending Trial (SAPT).⁵ The SAPT streamlines the litigation process, as parties now file a single application for its interlocutory relief, as opposed to a step-by-step manner typical of proceedings under the ROC 2014. Parties are encouraged to flesh out and consolidate any interlocutory applications it may wish to make at an earlier stage of proceedings.

3. What are the main alternative dispute resolution (ADR) methods used to settle large commercial disputes?

ADR is an integral part of the Singapore legal system. The Singapore courts actively encourage litigants to explore alternative means in which their dispute can be resolved outside of the courts. Order 5 rule 1(2) of the ROC 2021 specifies that a party must make an offer of amicable resolution (whether an offer to settle, or an offer to resolve the dispute other than by litigation) before commencing any proceedings. The Supreme Court Practice Directions expressly require solicitors to file a Pre-Case Conference Questionnaire answering whether ADR has been attempted. The State Courts Practice Directions provide for a presumption of ADR to operate in relation to all civil claims. Parties who do not participate in ADR may face adverse costs consequences at the conclusion of the matter.

Parties engaged in commercial disputes may prefer to participate in mediation and/or arbitration. There is also the possibility of referring the dispute for a neutral evaluation by a neutral third party, based on the evidence provided by the disputants.

Mediation is offered by various institutions in Singapore, such as the Singapore Mediation Centre, the Singapore International Mediation Centre, and the Singapore International Mediation Institute. If a dispute is heard in the State Courts, mediation can also be conducted in the State Courts' Court Dispute Resolution Cluster. The introduction of the Mediation Act 2017 also allows parties to: stay court proceedings in favour of mediation (section 8); and enforce a mediated settlement in the same manner as an order of court (section 12). Further, the UN Convention on International Settlement Agreements Resulting from Mediation (i.e. the Singapore Convention on Mediation) allows commercial parties in cross-border disputes to apply directly to the courts of participating countries for a mediated settlement agreement to be enforced.

Parties may choose to settle their commercial disputes through submission to arbitration proceedings seated in Singapore. Depending on the nature of such arbitration proceedings, one of two statutory regimes may apply: the Arbitration Act 2001 (AA) or the International Arbitration Act 1994 (IAA) (see Question 9).⁶

⁵ Supreme Court Practice Directions 2021, see Appendix B8, SAPT Checklist (paragraph 56(12)-(13)).

⁶ A third statutory regime, the Arbitration (International Investment Disputes) Act 1968, is applicable for investment treaty arbitrations commenced pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

While other arbitration institutes have set up offices in Singapore, the Singapore International Arbitration Centre (SIAC) remains the only local arbitration institution. It is also the default statutory appointing authority for arbitrators under both the AA and IAA.⁷

4. How long, on average, do court proceedings take to reach trial?

The length of any dispute depends on a variety of factors, such as the complexity of the issues, the number of parties involved and the nature and number of interlocutory applications filed. Prior to the ROC 2021 amendments, cases generally took twelve to eighteen months before trial dates were set down.

The amendments to the ROC 2021 aim to increase the speed in which matters reach the trial stage. Key changes include the introduction of the SAPT mechanism, the narrowing of the disclosure obligations of parties (parties are generally no longer able to seek documents that would lead it on a train of inquiry to other documents),⁸ and for the courts to have the ability to order the filing of affidavits of evidence-in-chief before the disclosure process. Under ROC 2021, matters can be expected to be set down for trial sooner, likely within six to nine months, subject to the SAPT process.

5. What disclosure obligations apply? Are parties required to disclose unhelpful documents as well as those on which they rely?

The disclosure obligations of parties are provided for in Order 11 of the ROC 2021. In essence, parties are required to disclose:

- all documents that the party will be relying on; and
- all known adverse documents.⁹

In addition to the general disclosure obligations, a party can also apply under Order 11 rule 3(1) of the ROC 2021 to request for the disclosure of specific document(s) or classes of documents. An applicant asking for specific discovery must properly identify the requested document, and show that it is material to the issues in dispute.¹⁰

Disclosure obligations are continuing. If, at any time during the proceedings, a party discovers any document material to the case (whether in support or adverse), that party is under an obligation to disclose it. A party who fails to comply with its disclosure obligations is liable to various adverse consequences, including dismissal of its action or defence, or having an adverse inference drawn in respect of a particular matter.¹¹

⁷ Section 13(8), AA; section 8(2), IAA.

⁸ Order 11 rule 5 ROC 2021.

⁹ Order 11 rule 2(1) ROC 2021.

¹⁰ Order 11 rule 3(1)(a) – (b), ROC 2021. Applications for specific documents ought, as a general rule, to be made as part of the SAPT. However, the High Court (General Division) in *Interactive Digital Finance Ltd and another v. Credit Suisse AG and another* [2023] SGHC 198 held (at [33]) that, in the context of a request for the production of documents referred to in pleadings, the court had the power pursuant to Order 3 Rule 2(2) and Order 11 Rule 4 ROC 2021 to order the production of documents even when no formal application was made. Such requests need only be made by way of writing (see [38]).

¹¹ Order 11 rule 7 ROC 2021.

However, documents which are protected by privilege (e.g. communications with solicitors, letters of advice) do not need to be disclosed.¹² ROC 2021 also clarifies that an inadvertent or unlawful disclosure of privileged material does not result in that document losing its privileged status.¹³ There are two types of legal privilege:

- legal advice privilege; and
- litigation privilege.

6. Can witnesses be required to attend trial and face cross-examination?

Order 15 rule 4 of the ROC 2021 allows a party to request for an order to compel a witness to either:

- attend court; or
- produce documents.

A similar order can be sought under Order 20 rule 3 of the SICC Rules 2021. Parties who refuse to comply with such orders can be subjected to contempt of court proceedings.¹⁴

7. What discretion do the courts have in making costs orders?

The courts retain discretion to determine all issues relating to costs.

In general, party-to-party costs will be awarded in favour of the successful party, i.e. costs following the event. Various factors affect the exercise of the court's discretion to grant costs, and these include:

- any efforts taken by the parties to reach an amicable resolution;
- the conduct of the parties generally;
- the complexity of the case; and
- the principle of proportionality.¹⁵

Such costs may be agreed between counsel, fixed or taxed¹⁶ by the court at a taxation hearing, on a standard or indemnity basis.¹⁷

In the exercise of their discretion, the courts are aided by various costs schedules. Appendix 1 to Order 21 of the ROC 2021 sets out fixed costs for certain matters that result in judgment without going to trial. For all other matters, Appendix G of the Supreme Court Practice Directions sets out the guidelines for costs, which parties can take guidance from based on the nature and circumstances of their respective cases.

Solicitor-and-client costs, if not already agreed, can be determined by a taxation process. In or around 2018, the Civil Justice Commission had recommended the introduction of fixed legal fees chargeable by solicitors to their clients for civil matters. This recommendation was withdrawn and did not proceed.

¹² Order 11 rule 8(1) ROC 2021.

¹³ Order 11 rule 8(2) ROC 2021.

¹⁴ Order 23 rule 3 ROC 2021.

¹⁵ Order 21 rule 2(2) ROC 2021.

¹⁶ Order 21, Division 2 ROC 2021 - Procedure on assessment.

¹⁷ Order 21 rules 22 (2), (3) ROC 2021.

8. What are the main types of interim remedies available?

Interim relief is provided for under Order 13 of the ROC 2021. The main application for interim relief is an injunction, which either prevents or requires a party to do something. Because an injunction can be prohibitive or mandatory, there is a broad spectrum of relief which a party can seek. These include injunctions to:

- restrain the disposition of any assets (*Mareva* injunctions);
- restrain wrongful acts which have been threatened or are imminent (*qua timet* injunction); and
- allow the applicant to enter into the respondent's premises to seize documents and materials relevant to the suit for the purposes of preservation (known as *Anton Piller* orders).

Injunctive relief is usually granted when an applicant can satisfy the court that:

- there is a serious question to be tried; and
- the balance of convenience lies in favour of granting or refusing the interlocutory relief sought.¹⁸

The guiding principle for the courts is to take the course which appears to carry the lower risk of injustice in the event that the decision should turn out to be wrong.¹⁹

An application for an injunction can be taken out with or without notice to the other party. In either of the 2 situations, Order 13 rule 1(5) of the ROC 2021 states that an applicant is nevertheless still required to provide full and frank disclosure. This means disclosure of all material facts that the applicant knows or reasonably ought to know, even if such facts are adverse to the applicant's case.²⁰ The consequences of breaching the duty of full and frank disclosure will depend on the circumstances in which the breach occurred; if the breach was deliberate, the application may be liable to be dismissed.

9. What approach do the local courts adopt with respect to arbitration? What arbitration law applies and is it based on the UNCITRAL Model Law?

Two regimes govern the conduct of commercial arbitration in Singapore:

- The AA applies to arbitrations:
 - seated in Singapore; and
 - for which Part 2 of the IAA does not apply.²¹

The AA is intended to largely mirror the IAA and international practices reflected in the 1985 UNCITRAL Model Law on International Commercial Arbitration (Model Law), save that the courts have been vested with more supervisory powers in the case of arbitrations governed by the AA.²²

- The IAA applies to arbitrations:
 - which are "international" (as defined at sections 5(2) – (3) of the IAA), even where the seat of arbitration is Singapore; or

¹⁸ *American Cyanamid Co v. Ethicon Ltd* [1975] 1 All ER 504.

¹⁹ *Chuan Hong Petrol Station Pte Ltd v. Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1.

²⁰ *Lim Suk Ling Priscilla v. Amber Compounding Pharmacy Pte Ltd* [2020] 2 SLR 912 at [123(b)].

²¹ Section 3, AA. These arbitrations shall be referred to as "domestic arbitrations".

²² *Soh Beng Tee & Co Pte Ltd v. Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("Soh") at [61].

- where parties have agreed in writing that Part 2 of the IAA or the Model Law shall apply.²³

The IAA gives effect to the Model Law (save for Chapter VIII) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).²⁴ The Courts have espoused a policy of minimal curial intervention and adopted a pro-arbitration approach for arbitrations governed by the IAA.²⁵

10. Can arbitrators grant interim relief?

Unless parties agree otherwise, the AA allows arbitrators to grant only certain categories of interim relief.²⁶ Section 28(2) of the AA gives arbitrators the power to, among other things, make orders for:

- the preservation and interim custody of any evidence for the purposes of the proceedings;
- the preservation, interim custody or sale of any property which is or forms part of the subject matter of the dispute; and
- (subject to certain conditions) security for costs.²⁷

All other categories of interim relief (e.g. interim injunctions) may only be granted by the courts.²⁸

The IAA gives arbitrators a wider range of powers (as compared to the AA), and, therefore, arbitrators can grant a wider array of interim relief. Section 12(1) of the IAA gives arbitrators the same powers as set out at section 28(2) of the AA, and, additionally, the power to:

- make orders to ensure that awards rendered in international arbitration proceedings are not rendered ineffectual by the dissipation of assets by a party;
- grant interim injunctions or any other interim measures; and
- enforce any confidentiality obligation.

11. On what grounds can an arbitration award be appealed?

Unless parties have agreed to exclude this right, parties to domestic arbitrations may, with the permission of the courts or with the agreement of the other parties, appeal to the courts on questions of law arising out of domestic arbitration awards.²⁹ Before filing its application for permission to appeal or the appeal itself (as the case may be), the appealing party must first exhaust any available arbitral process of appeal or review, as well as any available recourse under section 43 of the AA to correct or interpret the arbitration award.³⁰ The Courts will provide permission to appeal only if:

²³ Section 5, IAA. These arbitrations shall be referred to as “international arbitrations”.

²⁴ Section 3, IAA; second Schedule, IAA.

²⁵ *CKG v. CKH* [2021] 5 SLR 84 at [7]; Soh at [42]-[65].

²⁶ Section 28(1), AA.

²⁷ Section 28(2), AA.

²⁸ Section 31(1), AA.

²⁹ Sections 49(1) – (2), AA.

³⁰ Section 50(2), AA.

- the determination of the question will substantially affect the rights of one or more of the parties;
- the question is one which the arbitral tribunal was asked to determine;
- on the basis of the findings of fact in the award:
 - the decision of the arbitral tribunal on the question is obviously wrong; or
 - the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and, finally,
- despite parties' agreement to resolve the matter by arbitration, it is just and proper in all the circumstances for the courts to determine the question.

Save that section 10(3) of the IAA gives parties a limited right to appeal rulings on jurisdiction, there is presently no right to appeal arbitration awards rendered in international arbitrations. The only recourse parties have against such awards would be to set them aside pursuant to the grounds set out at section 24 of the IAA and/or Article 34(2) of the Model Law, or to refuse enforcement on the grounds set out at section 31 of the IAA and/or Article 5 of the Model Law. However, it should be noted that in 2019, the Ministry of Law (MinLaw) launched a Public Consultation on Proposed Amendments to the IAA. One of the proposed amendments was to allow parties to international arbitrations to appeal to the courts on questions of law arising out of awards made in international arbitration proceedings, provided parties have agreed to opt in to this mechanism.³¹ As at March 2023, MinLaw had yet to publicly announce whether the IAA would be amended to allow this limited right of appeal.

12. What international conventions and agreements on enforcement of judgments or arbitral awards is Singapore a party to?

In relation to multi-national conventions and agreements, Singapore is a signatory to the New York Convention on the basis of reciprocity with other contracting states and the Hague Convention on Choice of Court Agreements (Hague Convention).

In terms of country-specific agreements, Singapore has entered into binding agreements for the reciprocal enforcement of certain types of judgments with: Hong Kong Special Administrative Region of the People's Republic of China, Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka and the United Kingdom of Great Britain and Northern Ireland.

Finally, the Supreme Court (which includes the SICC) has entered into various Memoranda of Guidance (MoGs) with the Supreme Courts of Rwanda, Myanmar, People's Republic of China, Bermuda, as well as the Abu Dhabi Global Market Courts, Dubai International Financial Courts and Qatar International Court and Dispute Resolution Centre in relation to the enforcement of money judgments. While these MoGs are not legally binding, they nevertheless provide guidance on how money judgments issued by these foreign courts may be recognised and enforced in the Singapore courts through commencing common law actions for the payment of unfulfilled judgment debts (see below, Question 13).

³¹ MinLaw, Public Consultation on Proposed Amendments to the IAA, 26 June 2019 (www.mlaw.gov.sg/news/press-releases/public-consultation-on-proposed-amendments-to-the-international-arbitration-act).

13. What types of judgments in commercial matters are enforceable and what types are excluded?

Under the Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA), the courts may, unless the Choice of Court Agreements Act 2016 (CCAA) is applicable,³² register the following types of judgments so that they may be enforced as if they were judgments obtained in Singapore:³³

- certain interlocutory and final judgments issued by the superior courts of Hong Kong Special Administrative Region of the People's Republic of China; and
- money judgments that are final and conclusive as between the parties to it issued by the superior courts of Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka and the United Kingdom of Great Britain and Northern Ireland.

The CCAA implements the Hague Convention and provides that, subject to exceptions, judgments of the courts of the foreign contracting states will be recognised and enforceable in Singapore in the same manner as judgments issued by the Singapore courts.³⁴

Foreign money judgments not covered by any of the above statutory regimes can be enforced by commencing common law actions for payment of unfulfilled judgment debts. Such common law actions can only be brought to enforce judgments for fixed or ascertainable sums of money. In this regard, the Supreme Court has entered into non-binding MoGs with various foreign courts which provide guidance on the treatment of common law actions based on judgments issued by these foreign courts (see above, Question 12).

Otherwise, all other types of judgments are unenforceable. Fresh actions (where the claimants would have to show the Singapore courts that, among other things, Singapore is the *forum conveniens* for the action) would have to be commenced.

14. What is the process for registration of foreign judgments and arbitral awards?

Applications:

- To register foreign judgments under section 4 of the REFJA must be made by originating application (without notice), supported by affidavit(s) exhibiting, among other things:
 - the foreign judgment (or a verified, certified or duly authenticated copy); and
 - evidence on, among other things, the:
 - enforceability of the foreign judgment in the country of the original court; and
 - law of the country of the original court under which any interest has become due under the judgment.³⁵

³² Section 2A, REFJA. The CCAA is the applicable statutory regime for the recognition and enforcement of judgments issued by courts: (a) of contracting states to the Hague Convention; and (b) that are the designated courts in parties' exclusive choice of court agreement.

³³ Section 4, REFJA.

³⁴ Section 13(1), CCAA.

³⁵ Order 60 rules 2 and 3, ROC 2021.

- To recognise foreign judgments under section 13 of the CCAA must also be made by originating application (without notice), supported by an affidavit exhibiting, among other things:
 - a certified complete copy of the foreign judgment (including the reasons given by the foreign court);
 - the exclusive jurisdiction clause applicable to the dispute (or a certified copy or any other evidence of the agreement);
 - documents which establish that the foreign judgment has effect in the state of origin; and
 - where the foreign judgment was given by default, the document (or a certified copy) showing that the defaulting party was notified of the document instituting the proceedings.³⁶
- For permission to enforce awards rendered in domestic arbitrations under sections 37 and 46 of the AA must be made by:
 - summons in the action (where an action is pending); and
 - in any other case, originating application.

The application must be supported by an affidavit and may be made without notice. The affidavit must exhibit, among other things, originals or copies of the:

 - arbitration agreement or any record of its contents; and
 - arbitration award.³⁷

Such awards can only be registered or recognised in the context of an enforcement application. There is no separate recognition or registration application.
- For permission to enforce awards rendered in international arbitrations under sections 18, 19 and 29 of the IAA there is a process which is similar in procedure and requirements to those to enforce domestic arbitration awards (see above), save that:
 - the arbitration award exhibited to the supporting affidavit must be duly authenticated or certified (i.e. a mere copy of the award is insufficient); and
 - when enforcing a “foreign award”, the original or duly certified copy of the arbitration agreement must be exhibited (i.e. exhibiting a record of the content of the arbitration agreement is insufficient).³⁸

15. Once the judgment or award is registered, what are the available methods of execution?

Once the judgment or award is registered pursuant to the CCAA, REFJA, AA or IAA, it will be enforceable as if it were a judgment issued by the General Division of the Singapore High Court.³⁹ If the judgment remains unsatisfied, the enforcement applicant can apply to the courts for:

³⁶ Order 37 rule 2, ROC 2021.

³⁷ Order 34 rules 3 and 14, ROC 2021.

³⁸ Section 27, IAA; Order 48 rules 3 and 6, ROC 2021.

³⁹ Section 13(1), CCAA; section 4(1), REFJA; sections 37 and 46, AA; sections 18, 19 and 29 IAA.

- enforcement orders for seizure and sale of the enforcement respondent's property (both movable and immovable); and/or
- attachment of debts owed to the debtors by third parties (e.g. by way of garnishee proceedings).

If the unsatisfied judgment is more than the statutory threshold of SGD 15,000, the enforcement applicant may also commence insolvency proceedings against the individual or Singapore-incorporated entity in question.

16. What interim measures are available pending enforcement?

A post-judgment *Mareva* injunction may be obtained if the Courts are satisfied of the following:⁴⁰

- there is a real risk of the respondent dissipating its assets with the intention of depriving the applicant of satisfaction of the judgment debt;
- the injunction is in aid of execution; and
- it is in the interests of justice to grant the injunction.

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Josephine Choo is a Partner in the Specialist & Private Client Disputes Practice. She has experience in various disputes, before the Singapore Courts as well as arbitral tribunals, involving a variety of projects, such as airport terminals and tunnelling works for rapid transit system, commercial and residential buildings.

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⁴⁰ *JTrust Asia Pte Ltd v. Group Lease Holdings Pte Ltd and others* [2021] 1 SLR 1298 at [21].

Wendy has consistently been recommended in legal publications for her dispute resolution work; with sources noting she is “a phenomenal and utterly compelling advocate who is in a class of her own”, “a first-class advocate, with the unparalleled ability to cut through numerous complex facts and legal arguments, extract the winning arguments, and to convey them effectively, with absolute charm and ease”.

She has also earned the rare distinction since 2020 of being selected as a Global Leader by Who’s Who Legal in three practice areas: Litigation, Arbitration and Asset Recovery, and as a Thought Leader in Commercial Litigation and Asset Recovery since 2022.

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