

Singapore

Engelin Teh Practice LLC

Litigation

1 What is the structure of the legal profession?

Singapore has a fused profession in which lawyers are generally designated as “advocates and solicitors”. There is, however, normally a divide between lawyers who undertake contentious work and those who do not, although lawyers who are on the rolls are precluded from appearing in the Singapore Courts. There are also lawyers who specialise in certain types of work, especially in the larger firms.

2 What is the structure of the Court system?

The Courts are divided between the Subordinate Courts and the Supreme Court. The Subordinate Courts are made up of the District Courts, Magistrates’ Courts, Family Courts, Juvenile Courts, Coroners’ Courts and the Small Claims Tribunals. The civil jurisdiction of the Magistrates’ Courts extends to claims not exceeding S\$60,000 while that of the District Court extends to claims not exceeding S\$250,000. Claims above S\$250,000 have to be filed in the High Court.

The Supreme Court consists of the High Court and the Court of Appeal, which is Singapore’s highest Court.

3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

Singapore’s legal system is adversarial rather than inquisitorial in nature. This means, in theory, that the judges take a relatively passive role in the conduct of matters before them, although it really much depends on the individual temperaments of the judges. Singapore abolished the jury system more than 30 years ago, so the judges invariably decide both questions of fact and law. Judges deliver their judgments on the basis of evidence and submissions that are received both orally and in writing.

4 What are the time limits for bringing civil claims?

Contractual and tortious claims have to be brought within six years of when the cause of action accrued. Personal injury claims have to be brought within three years. Time limits are prescribed for other types of claims and may be extended in some cases.

5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil claim is usually commenced by way of a Writ of Summons, which is filed electronically with the Courts. The Writ is indorsed with a Statement of Claim, which sets out in numbered paragraphs the material facts relied on by the plaintiff to make out their claim and which concludes with the remedy they seek. After the Writ has been fixed with the seal of the Court it is filed in, it is then served on the defendant. The defendant must then enter an appearance in the action by filing a formal document called a Memorandum of Appearance. If the defendant defaults, the plaintiff may enter judgment on their claim. If the defendant enters an appearance they must then go on to file a Defence. The plaintiff may if they wish file a Reply. The Statement of Claim, the Defence and the Reply are called pleadings. After the close of pleadings, parties proceed to discovery, which involves the disclosure to each other of the documents that are relevant to the action, and exchange of affidavits (see question 6). The action is then tried in open Court. After the conclusion of the trial, the Court will deliver its judgment.

6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The guiding principle of Singapore’s litigation process is that no party should be able to surprise the other. The parties should know clearly the case they have to meet before the trial commences. The parties are obliged to give discovery

of all relevant documents by filing Lists of Documents verified by affidavit. They are then entitled to inspect and take copies of each other's documents. They are also obliged to identify the witnesses they intend to call for the trial. The evidence that these witnesses intend to give, whether they be witnesses of fact or expert witnesses, is contained in affidavits that are exchanged before the trial.

Evidence is presented at trial by the calling of the witnesses that have earlier filed affidavits. The Court will generally not receive these affidavits unless the witnesses are called. Once witnesses have been sworn in, they will confirm the evidence they have given on affidavit with any necessary corrections. Witnesses may supplement their evidence generally only to address evidence from opposing party that they could not have anticipated. After that, the witnesses are cross-examined by opposing counsel on their evidence.

7 To what extent are the parties able to control the procedure and timetable? How quick is the process?

Unified Rules of Court govern procedure in both the Subordinate and Supreme Courts. Parties generally control proceedings in the Subordinate Courts, ie, they can decide how much latitude they wish to give each other in relation to the steps to be taken in the action. However, if no steps are taken in an action for a year, whether in the Subordinate Courts or the High Court, the action will be discontinued automatically.

The High Court controls the conduct of actions within its purview quite strictly and parties will not be able to grant much indulgence to each other in relation to the steps to be taken. Those steps are directed by the Court through a series of "pre-trial conferences".

If the parties are diligent and the action is not delayed by interlocutory applications or appeals or for other reasons, civil proceedings in both the Subordinate and High Courts should be tried within nine to 12 months from inception. Appeals to the Court of Appeal are usually disposed of within four to five months on the grounds of decision of the High Court being available.

Plaintiffs may be able to obtain summary judgment if the defendant's Defence does not raise any triable issue. If summary judgment is granted, it will obviate the need for a trial of the action.

8 What interim remedies are available to preserve the parties' interest pending judgment?

The Courts have powers to grant orders to preserve the subject matter of the action or to prevent parties from destroying evidence or dissipating their assets to avoid a judgment.

9 What substantive remedies are available?

The Courts have wide powers to award damages, injunctions, costs, interest, to issue prerogative writs such as writs for habeas corpus, mandamus, and other administrative law remedies, to make orders for specific performance, partition land, an account to be given, land or other property to be charged, to make declarations of legal rights, and so on.

10 What means of enforcement are available?

These include writs of execution to allow the judgment creditor to seize and sell the judgment debtor's assets (writ of seizure and sale), to obtain payments from a third party that owes money to the judgment debtor (garnishee proceedings), to obtain possession of immovable property (writ of possession), and to obtain possession of movable property (writ of delivery). The Court may also appoint a receiver, or appoint a time for the judgment creditor to examine the judgment debtor on oath to determine what assets the latter may have to satisfy the judgment. If a judgment debtor breaches an injunction or fails to comply with an order for specific performance, the judgment creditor may apply for committal. The Court can in appropriate cases fine or imprison the judgment debtor.

11 Does the Court have power to order costs? Are foreign claimants required to provide security for costs?

The Courts have power to order costs and these are usually awarded in favour of the winning party. The costs awarded will not usually cover all the costs that the winning party has to pay its own solicitors.

Foreign claimants are not invariably required to provide security for the defendant's costs. It depends on a number of factors such as, for example, how strong a case the claimants have and whether they have any assets within the jurisdiction.

12 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

For civil actions commenced in the Subordinate Courts, an appeal lies as of right to the High Court where the amount in dispute or the value of the subject matter exceeds S\$50,000. Otherwise, leave must be obtained in the first instance from the relevant Subordinate Court and failing that from the High Court. Subject to some exceptions (such as rulings on costs), a further appeal lies to the Court of Appeal, although in some situations leave from the Court of Appeal is required. The position is similar in relation to actions commenced in the High Court.

An appeal does not operate as a stay of execution and ordinarily the only ground upon which a stay is granted would be that the appeal would otherwise be rendered nugatory.

13 To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

There is immunity for states, including heads of states in their public capacity, their governments and departments but there is no immunity for state entities that are distinct from the executive organs of the state's government and capable of suing and being sued.

On the domestic front, immunity is limited to the Singapore Government. The Government does not have blanket immunity from civil claims, but the bringing of such claims is regulated by statute.

14 What procedures exist for the recognition and enforcement of foreign judgments?

Only judgments of the superior Courts of Commonwealth countries and of Hong Kong SAR are registrable and enforceable. The procedure for registering the judgment is set out in the Rules of Court. Parties that have obtained a judgment that is not registrable will be obliged to commence fresh proceedings in Singapore.

15 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

No, this is strictly prohibited.

Arbitration

16 Is the arbitration law based on the UNCITRAL Model Law?

Arbitrations in Singapore may be either international or domestic and they are governed by different regimes. An arbitration is international if there is a foreign element, for example, where one of the parties has its place of business outside Singapore when the arbitration agreement was concluded.

The International Arbitration Act governs international arbitrations and essentially applies the Model Law. Domestic arbitrations are governed by the Arbitration Act (AA), which departs to a greater extent from the Model Law. Both acts are available online at www.statutes.agc.gov.sg.

17 What are the main national arbitration institutions?

The main institution is the Singapore International Arbitration Centre (SIAC), www.siac.org.sg.

18 Are there any restrictions on who may represent the parties to an arbitration?

No. Foreign lawyers may appear in both International and Domestic arbitrations. A party may even be represented by someone who is not a lawyer.

19 What are the formal requirements for an enforceable arbitration agreement?

It must be in writing.

20 Can the Court refuse to stay litigation if there is valid arbitration clause?

Under the IAA, no. Under the AA, the Court has a discretion that it must exercise on settled principles. The Court will ordinarily grant a stay.

21 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

In those circumstances, a single arbitrator will be appointed. The appointing authority is the Chairman of the SIAC.

22 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Both the IAA and the AA adopt article 14 of the Model Law, which restricts a challenge to cases where there are justifiable doubts as to the arbitrator's impartiality or independence or that they possess the qualifications agreed by the parties.

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

The parties are free to decide the procedure they wish to adopt for the conduct of the arbitration. They may also allow the arbitrator to decide. In the absence of any agreement, both the IAA and AA essentially apply the minimal procedural requirements of the Model Law. The SIAC has rules for both International and Domestic arbitrations and parties may adopt either of these.

24 On what grounds can the Court intervene during an arbitration?

Under the IAA and the AA, the Court may intervene by removing an arbitrator if there is justifiable doubt about the arbitrator's impartiality or independence. The Court may also intervene by hearing an appeal against a holding by a tribunal or by determining a preliminary point of law, subject to the consent of the parties and the tribunal.

25 Do arbitrators have powers to grant interim or conservatory relief?

They do, under both the IAA and the AA. The arbitrator may make any interim order in relation to the subject matter of the dispute such as, for example, to preserve evidence or the subject matter of the dispute.

26 When and in what form must the award be delivered?

Under both the IAA and the AA, the awards must be in writing and signed by the arbitrator(s) stating the place of arbitration and the date the award is issued. The reasons for the award should be stated, unless otherwise agreed by the parties.

No time frame for the issue of the award is stipulated under the IAA and the AA. If, for example, the parties had agreed to the application of the SIAC Domestic Arbitration Rules, the arbitrator would be obliged to give a reasoned award within 45 days of the close of hearing.

27 On what grounds can an award be appealed to the Court?

Under the AA, an award may be appealed to the Court where the parties so agree or where the leave of the High Court is obtained. Leave to appeal will only be granted if the Court is satisfied that there is a question of law that will substantially affect the rights of one of the parties and where the tribunal's decision is obviously wrong, or where the question is one of public importance, or the decision is at least open to serious doubt.

28 What procedures exist for enforcement of foreign and domestic awards?

Domestic awards may be enforced in Singapore under the IAA and the AA. To enforce a domestic award as a judgment or order of Court, an application must first be made to the High Court to obtain leave of Court to do so. Foreign awards made in any of the New York Convention countries may also be enforced in Singapore within six years of the making of the award, in the same manner as a domestic award.

29 Can a successful party recover its costs?

Ordinarily, the losing party will be ordered to pay the winning party's costs. These costs will not however fully cover the fees payable by the winning party to its own solicitors.

Alternative dispute resolution

30 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Submission to any alternative dispute resolution forum is entirely voluntary. In the Subordinate Courts, parties frequently resort to the free mediation service provided by the Courts. Senior district judges conduct the mediation and it is often successful. The Supreme Court also provides a mediation service although it is not free.

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Founded in 1994 primarily as a firm focusing on dispute resolution and banking and corporate work, Engelin Teh Practice LLC is today a premier boutique law corporation. Over the years, we have grown with market demands and today offer a full range of legal services to our clients spanning dispute resolution, corporate and banking, insurance, real property and intellectual property.

Our success is built on an understanding of our clients' needs and a commitment to providing prompt, effective and workable solutions. Many of the relationships we have built with our clients are long standing and we pride ourselves on the fact that our senior lawyers are personally involved in the matters entrusted to us and are always accessible to consult with.

We have worked closely with Herbert Smith's Singapore office for many years on dispute resolution in Singapore.