

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

# **SINGAPORE**

## **Responses submitted by:**

*Name: Jonathan Leach (Partner, Hogan Lovells) and Matthew Saw (Partner, Lee & Lee),  
assisted by Adam Mickley and Cia Ai Eng (Associates, Hogan Lovells)*

*Law Firm/Company: Hogan Lovells and Lee & Lee*

*Location: Singapore, Singapore*

### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Singapore is a common law jurisdiction. The foundation of the Singapore legal system is English law and English court decisions can still be highly persuasive.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

Adversarial.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

The Chief Justice, Judges of Appeal, Judicial Commissioners and High Court Judges are appointed by the President from candidates recommended by the Prime Minister. The Prime Minister must consult with the Chief Justice before recommending the judges. The judges of lower Courts, such as District Judges and Magistrates, are employed by the Legal Service Commission.

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

There are two tiers of courts in Singapore: State Courts and Supreme Courts. In the State Courts, there are several specialized courts including: family court, coroner's court, juvenile court, community court and a small claims tribunal. The Supreme Courts consist of the High Court, which can exercise both original jurisdiction and appellate jurisdiction in civil and criminal cases, and the Court of Appeal which hears appeals of civil and criminal cases from the High Court.

Also, Singapore is in the process of creating an International Commercial Court (the "SICC"). The SICC will be established as a Division of the High Court but cases before the SICC will be heard by an "International Judge" who will be appointed by the Chief Justice on an ad hoc basis from a standing panel. Registered foreign lawyers will have rights to advise, plead and appear for clients in SICC proceedings which have "no substantial connection to Singapore" and in related appeals to the Court of Appeal. The SICC is expected to be in operation by the end of 2015.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Parties are free to agree to refer their disputes to arbitration in Singapore. There are two different arbitral regimes; one for domestic arbitrations and the other for international arbitrations. The institutional rules most commonly used where Singapore is chosen as the seat are the Rules of the Singapore International Arbitration Centre or of the International Chamber of Commerce. For ad hoc arbitrations, the Rules of the United Nations Commission on International Trade Law are typically used.

### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

Yes. A party may rely on a valid and enforceable arbitration agreement to apply for a stay of Court proceedings commenced by the counterparty.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

No. However, mediation is strongly encouraged, particularly for (a) claims of \$20,000 or less; and (b) claims between \$20,000 and \$60,000 which will take more than 3 days of trial. While mediation is not mandatory, in practice, judges will generally force parties into mediation if their claim is in one of those two tracks.

### **8. What is the process for pre-hearing fact discovery (if any)?**

(a) *Are there provisions for mandatory document disclosures?*

In civil proceedings, parties are generally required to disclose documents which are relevant to the issues regardless of whether a particular document is beneficial to his case, adverse to his case or supportive of the counterparty's case.

(b) *Is there provision for oral examinations of the parties or others?*

In civil procedure, the court allows for "interrogatories". The applicant serves a series of questions on the respondent and the respondent files its answers under a sworn affidavit. If the court finds the answers insufficient, the respondent may be ordered to give answers under oral examination. The process can even be initiated pre-action, i.e. before the writ is filed.

(c) *Are there limits on the length of oral examinations?*

No. However, a judge may limit the length as he sees fit.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

(d) *Are witness statements or summaries to be provided before the hearing?*

Yes. Each party has to prepare, file, and exchange affidavits of evidence in chief for each of its witnesses. These are written sworn statements by the witnesses which will stand as their testimony at the trial and on which they will be cross-examined.

### **9. What is the process for pre-hearing expert disclosure (if any)?**

(a) *Are expert reports or written summaries required to be exchanged?*

Expert evidence must be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him that the report exhibited is his and that he accepts full responsibility for the report.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No. However, a party may, with leave of the court, put written questions to an opposing expert requesting further clarification of his report.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Yes. The court may, at any stage, direct a discussion between experts for the purpose of requiring them to identify issues in the proceedings and to reach agreement on any issues where possible.

### **10. Are there other notable discovery rules?**

Parties may conduct e-discovery to obtain electronically-stored documents in computers and other storage media.

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

Yes. To facilitate proceedings, the Registrar, who acts as a judicial officer of the court, will hold regular pre-trial conferences. During these conferences, the Registrar will take stock of the status of the proceedings and give directions to parties on the next steps. The pre-trial conference will be supplemented by the Summons for Directions which is filed by the plaintiff to obtain formal directions, amongst other things, for the exchange of affidavits of evidence in chief and to fix trial dates.

### **12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

Yes, a party may make an application for summary judgment if a statement of claim has been served on the defendant and the defendant has entered an appearance in the action. It is the duty of the court to give judgment for the plaintiff when the court is satisfied not only that there is no defence, but that there is no fairly arguable point to be argued on behalf of the respondent.

**13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

After the exchange of affidavits of evidence in chief ("AEICs") and before the start of trial, parties will file what is called a Notice of Objection. In this Notice, parties set out their objections to each other's evidence in the AEICs, which could include objection to admissibility. The judge will then hear arguments on admissibility during the trial, usually before the cross-examination of witnesses.

**14. What is the standard for admissibility of expert evidence?**

When the court is likely to derive assistance from an opinion upon a point of scientific, technical or other specialised knowledge, the opinions of experts may be admitted. However, it is within the judge's discretion to exclude expert evidence if its probative force is out of proportion to its prejudicial effect in the trial.

**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

The court arguably has power to do so on its own motion. *See* Supreme Court of Judicature Act (Cap 322, 2007 Ed) s 18(2), Sch 1 para ; *see also* Criminal Procedure Code (Cap 68, 2012 ed).

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

There are five major categories of privilege in the Singapore Evidence Act: judicial privilege, legal professional privilege, marital communications privilege, self-incrimination privilege and a state interest privilege.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

Not applicable.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The court will determine whether a privilege exists. Notably, the court has no obligation to inform a witness that he may have and wish to assert a privilege in respect of certain matters.

**19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

Opening statements are required in all cases except where the trial Judge has dispensed with the requirement and in motor vehicle running down actions. The opening statement should set out the party's case in a nutshell, both as to facts and law. This will help to clarify issues between parties so that unnecessary time is not spent on trying to prove what is not disputed or irrelevant. The plaintiff's opening statement must be filed and served on all parties not less than three days before the start of the trial. The opening statements for the other party(ies) should similarly be filed and served not later than two days before the start of the trial. As the parties' opening statements would have been submitted to the Court prior to the trial, the Court would usually order that the opening statements be deemed seen and read at the beginning of the proceedings. In such circumstances, parties need not make oral opening submissions, but will go straight into the oral examination of witnesses in court.

(b) *What is the order of presentation of witnesses? (c) Who conducts examination and in what order?*

(d) *What is the process for closing submissions?*

The rules governing proceedings at trial follow the maxim 'he who asserts must prove.' As such, unless the burden of proof lays specifically with the defendant, the plaintiff is the first to introduce his witnesses who will give their evidence before the defendant is allowed to cross-examine them. Once the plaintiff's witnesses have been cross-examined, plaintiff may close his case. The defendant may then introduce his witnesses and plaintiff may cross-examine them. Following cross-examination, the defendant will close his case and the plaintiff will make a speech in reply.

**20. Please identify any other notable trial procedures.**

The trial procedure in Singapore is fairly similar to other common law jurisdictions.

**21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

Under traditional common law jurisprudence, the burden of proof lies on "whoever desires the court to give judgment on any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist." Further, Singapore's Evidence Act states that the burden of proof lies on the person who would fail if no evidence at all

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

were given on either side.

However, Singapore does follow the common law theory of *res ipsa loquitur* which shifts the burden of proof to the defendant when (i) the exact cause of the incident is unknown; (ii) the defendant had control over the agent of harm; (iii) and when the relevant damage would not normally have occurred in the absence of negligence.

**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

Compensatory damages and pre-judgment interest are available in Singapore. Singapore does not allow for punitive damages to be awarded.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Not applicable.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

Time limits are governed by the Limitations Act. A claim for a breach of contract or tort must be brought to the court within 6 years from the date of breach or from the date of injury. However, the time limit is 3 years when a claim is based on negligence, nuisance or breach of duty. The clock for negligence actions begins to run from the date the victim was aware or should have been aware that the action was due to negligence.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

There are two basic concepts that underlie the question of jurisdiction in cross-border disputes. First, there must be a legal connection between (1) the case or the defendant and (2) Singapore for jurisdiction to exist. Secondly, beyond the degree of connection of the case with Singapore and with other countries, the Singapore court may not exercise its jurisdiction unless it is satisfied that it is the most appropriate forum for the dispute.

A defendant can request that the Court declines jurisdiction on the basis that there is a more convenient forum, and the Court will determine the most appropriate forum in which to try the substantive dispute. In doing so, the Court will weigh each connecting factor in light of all the circumstances of the case, and the Court has said that it is not an exercise in comparing the sheer number of connecting factors, nor is it an exercise in just weighing the connecting factors for and against a certain jurisdiction.

It should also be noted that there is a threshold test for the merits of the case that is related to but distinct from jurisdictional considerations. A weak case on jurisdictional considerations cannot be strengthened by testing the merits of the case; conversely a hopeless case on the merits cannot be strengthened by strong jurisdictional considerations.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Yes, a defendant may join other potentially responsible parties into the proceeding. To do so, he is required to serve a notice of indemnity and contribution on the third party. This is fairly common in bringing in tortfeasors or third parties who are obliged to indemnify the defendant.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

In most cases, the Court will order that the losing party pays for part of the winning party's costs. The amount recoverable is usually left to the parties to agree amongst themselves. If no agreement is reached, the quantum is to be decided by the Court by way of "taxation proceedings." The quantum recoverable usually includes (i) legal fees, (ii) out-of-pocket disbursements (such as Court fees) and (iii) applicable GST.

**28. Are contingency fees allowed?**

No. However, there have been recent discussions amongst the bar about potentially loosening the restrictions on contingency fee arrangements.

**29. Is third party funding of claims permitted? Under what circumstances?**

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

No. Singapore follows the common law doctrine of champerty, and there is a general prohibition against providing funding to third parties in order to conduct litigation. However, there has been a recent proposal by the Government to allow third party funding in Court and arbitration proceedings.

### **30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Yes, Singapore allows representative actions by people who have the same interest in any proceedings. The proceedings may be started, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all of the class. The class need not represent all members of the class, and parties are able to opt-out of the representative agreement to pursue their claim individually.

### **31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

Representative proceedings can be brought in Singapore, provided that the plaintiff shares the same interest as the non-parties he is representing in the action.

### **32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

Parties can expect their case to get to trial within 2 years. How long it actually takes, however, would depend on a myriad of factors including: the number of parties, the breadth of evidence and the complexities in each case.

### **33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

Yes. Decisions by the High Court (or lower courts such as the District Courts and Magistrate Courts) can be appealed. Certain appeals from lower courts such as the District Courts and Magistrate Courts require leave to appeal. The Court of Appeal hears appeals of civil and criminal cases from the High Court. The Court of Appeal is presided over by the Chief Justice, and in his absence, a Judge of Appeal or a Judge of the High Court. The Court of Appeal is usually made up of three Judges. However, certain appeals may be heard by only two Judges. If necessary, the Court of Appeal may comprise five or any greater uneven number of Judges.

As mentioned previously, The Chief Justice, Judges of Appeal, Judicial Commissioners and High Court Judges are appointed by the President from candidates recommended by the Prime Minister. The prime minister must consult with the Chief Justice before recommending the judges.



*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

All courtrooms in the Supreme Court building are equipped with the necessary network infrastructure to facilitate electronic hearings. Counsel may also bring their notebook computers to court, access electronic case files and present their cases using the appropriate technology. Singapore Courts pride themselves on being at the forefront of technology. Singapore has also established an electronic filing system that allows court documents to be prepared and filed electronically, processed for acceptance or rejection by the court Registry and stored, retrieved and updated for hearing.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Parties are allowed to use these technologies to assist the court, and parties frequently take advantage of the excellent electronic capabilities mentioned above.

**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

There is no solicitor/barrister distinction in Singapore. Therefore, the lawyer at trial and during any pre-trial procedures can be the same. It should be noted here that, although lawyers in foreign law firms (even those who are Singapore law qualified) cannot presently appear in Singapore court proceedings (at least not until the Singapore International Commercial Court comes into effect), English barristers who are Queens Counsel, or barristers of equivalent seniority from certain other jurisdictions, may apply on an ad hoc basis to appear as trial counsel.

**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

Singapore law provides that damages recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for damage. Singapore does follow the doctrine of joint and several liability among tortfeasors. When there are multiple tortfeasors and the plaintiff is 20% responsible, the defendant tortfeasors will be joint and severally liable for 80% of the damages.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

**38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?**

Singapore is not a signatory of the Hague Service Convention. All requests for service matters received by the Supreme Court from foreign countries must be in accordance with Order 65 of the Rules of Court.

A letter from a foreign court or tribunal requesting service in Singapore is forwarded by the Ministry of Foreign Affairs to the Supreme Court. This will be accompanied by two copies of the process to be served and its translation in English. Each party to the lawsuit is required to be served with one copy of the lawsuit. The Process Server (a government official in charge of delivering legal documents in lawsuits) will serve the documents.

After service, an affidavit by the Process Server stating the outcome of service together with the service documents, a covering letter and a Certificate of Service in compliance with Form 144 of the Rules of Court will be forwarded to the respective authorities. The requesting party is informed of the costs incurred and one of the copies of the process is returned with the endorsement of service.

**39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

No.

**40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

The court manages cases proactively soon after a case has been filed, or what is commonly known as Case Management. The intervention's goal is to reduce inefficient litigation practices and promote fair, speedy, and inexpensive dispute resolution.

**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

Not applicable.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SINGAPORE**

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Other than proposals for the Singapore International Commercial Court and litigation funding referred to above, there are also some new measures to control costs in litigation:

- Costs Scheduling – This requires parties to put in a costs schedule together with their closing submissions setting out the party and party costs (including disbursements) they will be claiming for if they are successful in their action.
- The Supreme Court has designed a Costs Guidelines which will set out the usual costs fixed by the court for various applications / proceedings.
- Costs Budgeting – A pilot project (which will take 12 – 18 months) is currently taking place. This requires parties to estimate the party and party costs for each stage of the action, until trial, and prepare a costs budget after general discovery for the court’s approval.