

ENCYCLOPEDIA OF INTERNATIONAL COMMERCIAL LITIGATION

Author Guide

[A] Aim of the Publication

The rapid, recent increase in transnational commercial litigation has made it even more necessary for lawyers to understand how claims are litigated in the courts of other countries. Yet information on court procedure, the local legal profession, and local judiciaries has not been readily available without specialist advice from local lawyers. This advice raises costs and may result in delays.

This loose-leaf work provides an overview of commercial litigation procedure and its judges and practitioners in the courts of the important commercial countries throughout the world. The basic work includes sections on Argentina, Australia, Austria, Belgium, Bermuda, Brazil, Canada, China (PRC), Cyprus, Czech Republic, Denmark, Egypt, England and Wales, Finland, France, Germany, Greece, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, the Netherlands, Norway, Pakistan, Poland, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Ukraine, United Arab Emirates, United States of America, Uruguay, and Vietnam.

Subsequent supplements will update current material and introduce several new sections, including East European, Far Eastern, and South American jurisdictions, and new material on limitation.

Each section gives a general account of the structure of the courts and their jurisdictions, civil litigation procedures in each country concerned, the local legal profession, local specialist areas and charges, and the local judiciary. The section then traces in detail each country's procedural steps for typical kinds of commercial litigation, such as claims for breach of sale of goods contracts, claims for damages under charter parties, claims relating to bank deposits, claims to enforce foreign judgements and arbitration awards, admiralty claims, and claims for breach of copyright and trademarks. The uniform subject matter of the different national sections permits ease of same-claim comparisons between different jurisdictions.

[B] Contact Details

This publication is edited by Sir Simon Bryan QC. For practical questions and comments, or if you wish to contribute, please contact the publication contact at Kluwer Law International, [Vincent Verschoor](mailto:Vincent.Verschoor@wolterskluwer.com), Vincent.Verschoor@wolterskluwer.com.

[C] Submission Guidelines

- [1] A brief biographical note, including both the current affiliation as well as the e-mail address of the author(s), should be provided in the manuscript.
- [2] Only manuscripts in English will be considered for publication. Manuscripts should be written in standard English, while using 'ize' and 'ization' instead of 'ise' and 'isation'. Preferred reference

source is the Oxford English Dictionary. However, in case of quotations the original spelling should be maintained. In case the complete manuscript is written by an American author, US spelling may also be used.

- [3] Manuscripts will be returned to the author if the English is below standard. In case of doubt about the correct use of the English language, authors are advised to have their text checked by a native speaker before submitting it.
- [4] Heading levels should be clearly indicated and should follow the standardized outline to allow for the full comparability of the contribution with other such contributions in the publication.
- [5] Special attention should be paid to quotations, footnotes, and references. All citations and quotations must be verified before submission of the manuscript. The accuracy of the contribution is the responsibility of the author. The journal has adopted the Association of Legal Writing Directors (ALWD) legal citation style to ensure uniformity. Citations should not appear in the text but in the footnotes. Footnotes should be numbered consecutively, using the footnote function in Word so that if any footnotes are added or deleted the others are automatically renumbered.
- [6] Tables should be self-explanatory and their content should not be repeated in the text. Do not tabulate unnecessarily. Tables should be numbered and should include concise titles.
- [7] Figures should be submitted as separate files along with the manuscript, and it is very important that they are high quality: .tif or .jpg files with a resolution of at least 600 dpi. Image material that has been downloaded from the internet generally is not acceptable due to low resolution.
- [8] Submitted manuscripts are understood to be final versions. They must not have been published or submitted for publication elsewhere.
- [9] Manuscripts should be submitted electronically, in Word format.

For further information on style, see the [House Style Guide](#).

[D] Update Cycle

We strive to update the content of this publication annually. We will inform the author well in advance of their deadline and send a reminder at least two times if the deadline is not met. Should we fail to hear from an author after several reminders, we will consider replacing the author.

[E] Peer Review

This publication is peer reviewed under the responsibility of the general editor.

[F] Copyright

- [1] Publication of the manuscript is subject to authors signing a 'Consent to Publish and Grant of Exclusive Licence' form. By signing this Form, authors warrant and represent that their contribution does not contain infringing, libellous, obscene or other unlawful matter.
- [2] Authors are allowed to post their manuscripts on public websites such as SSRN subject to the conditions set in our [Rights & Permissions Guide](#). In this Guide you can also find which other rights remain reserved to the author.
- [3] The author shall receive for the rights granted an electronic copy of their contribution.

[G] Outline

Note

- *It is appreciated that because of particular characteristics of each nation judicial system it may be unrealistic or impractical to adhere strictly to this outline. For example, when*

it comes to (B) Specific Sections, the procedure may be identical for several types of claim. In that case, there is little virtue in repeating again and again the identical text. It would in such a case be better to refer back to the description of the applicable procedure in connection with a type of claim covered earlier in the section. However, reference back should only be used where there are absolutely no material differences in procedure.

- *The distribution of words as between A Opening General Section and B Specific Sections is entirely a matter of judgment for each contributor. However, each General Section is likely to be more widely read than the Specific Sections and it is therefore important not to shorten the General much below half the total national presentation.*
- *Contributors who would like further explanation of these Contents or who have particular problems arising out of their contributions are urged to contact the General Editor before finalizing their contribution.*

PART A – GENERAL SECTION

(1) THE STRUCTURE OF THE COURTS

- (a) In which courts Commercial Litigation is initiated, in particular litigation of the types covered by the list under Specific Sections (1) to (12).*
- (b) relevant limits on the courts' jurisdiction: e.g.:*
 - (i) monetary value of claim*
 - (ii) issue-related limits – i.e. the nature of the claim, such as Admiralty, enforcement of foreign judgments, etc.*
 - (iii) other.*

[Note: in some jurisdictions it may be impossible to avoid a substantial overlap into matters covered by A(4). It would, however, be preferable to keep A(1) separate if possible. This is a matter for the judgment of each contributor].

(2) THE JUDICIARY

- (a) Training and background, i.e. Are the judges “career judges” without experience as advocates or trial lawyers? If not, what is their background Are they specialists commercial lawyers with experience of commercial litigation of the kinds listed in B(1) – (12).*

(3) THE LEGAL PROFESSION

- (a) Structure, i.e. whether divided into advocates and attorneys (non-advocates), type of profession unit (one man practitioners or substantial law firms with many partners).*
- (b) Experience in relation to the types of claim listed in Section B, indicating whether particular law firms or practitioners tend to specialize in particular kinds of litigation.*

Note: In some jurisdictions, some of the claims listed in Section B may be very rarely brought before the Court. If that is the case it would be best to say so].
- (c) Experience in dealing with overseas clients, overseas evidence and witnesses.*

- (d) *How the profession charges, average broad-brush charges for typical overseas client's litigation.*
- (e) *Whether properly-itemized bills or fee notes will be provided.*
- (f) *Whether there is a fee-review procedure, in particular, what remedies are available to an overseas client who believes that he has been overcharged?*

(4) JURISDICTION OF THE COURTS

I.e. upon what principles, if any, does the Courts exercise jurisdiction over defendants who are not present within the territory of the state and against whom proceedings would have to be served abroad? In this connection, what is required is an explanation of cases, particularly commercial disputes, where the courts will entertain an action against an overseas defendant.

(5) GENERAL DESCRIPTION OF PROCEDURE OF A TYPICAL COMMERCIAL CLAIM

- (a) *Pre-trial definition of issues; e.g. by means of written pleadings, indicating what such pleadings will contain, whether they can be amended later and, if so, by what procedure and upon what general principles;*
- (b) *Pre-trial hearings, indicating before whom such hearings are conducted, what matters are likely to be debated, what orders are likely to be made, whether the judge may encourage or order the parties to attempt mediation and what the parties must do in response to such order and what relation such pre-trial hearings have to the trial;*
- (c) *Pre-trial discovery/depositions, indicating whether and, if so, on what principles the parties to commercial actions must disclose their documents and their witnesses' evidence.*
- (d) *Other pre-trial exchange of evidence, such as experts' reports, i.e. are the reports or statements of expert witnesses, who will appear to give evidence at the trial, exchanged before the trial starts? What orders are made by the court to this effect?*
- (e) *Pre-trial investigatory procedures, i.e. does the court appoint experts or assessors to investigate the facts before the trial starts (or later)?*
- (f) *Fixing of trial dates, whether they will be adhered to by the court, what the waiting time is likely to be in commercial cases, how much time will be taken up by pre-trial procedures, such as those covered above.*
- (g) *Trial procedures – whether inquisitorial or adversarial, indicating*
 - (i) *in what form the trial is conducted;*
 - (ii) *whether there is recording of evidence and, if so, whether the transcript is available to the parties, or whether the judge makes all his own notes;*
 - (iii) *in what form (written or oral) the court receives evidence, whether statements of witnesses are exchanged in advance, whether cross-examination of witnesses at the trial is permitted, whether facts be proved by documents above;*
 - (iv) *in what form the Court receives expert evidence, whether the court appoints its own expert;*
 - (v) *how legal submissions are made at the trial, orally or in writing;*
 - (vi) *how damages are assessed, whether this is done by the judge at the trial or whether it is referred to other officials;*

(vii) *what happens if the case lasts longer than the estimated trial time reserved by the Court. Is it then heard to a finish or must it be adjourned to a new date?*

(h) *Availability of judgments, whether subject to delay, whether containing findings of facts on relevant factual issues, whether legal reasoning provided.*

(6) RECEPTION OF EVIDENCE AT THE TRIAL

- (a) *from overseas witnesses;*
- (b) *from expert witnesses; and*
- (c) *evidence of foreign law.*

(7) THE EXTENT TO WHICH THE COURTS HAVE REGARD TO PREVIOUS DECISIONS

Whether regarded as binding, persuasive or irrelevant.

(8) CONSERVATORY JURISDICTION

I.e. Can a plaintiff obtain orders freezing the defendant's assets pending completion of the trial? What is the effect of such orders?

(9) AVAILABILITY OF JUDGMENTS FOR INTEREST ON DEBT OR DAMAGES

(10) AVAILABILITY OF ORDERS FOR COSTS

Must a plaintiff put up security for costs before commencement of proceedings.

(11) ENFORCEMENT OF DOMESTIC JUDGMENTS AND ORDERS

(12) GERMAINE JURISDICTIONS

Those countries having identical or very similar procedures to those of the country in question with appropriate qualifications (e.g. Hong Kong and Singapore under the English section).

(13) APPEAL

In which courts are they heard. What is the procedure for their initiation and conduct?

(14) TIME LIMITATION

Within what period of time must claims for breach of commercial contracts of the kinds covered by (B) below, be started in the courts?

PART B – PARTICULAR CLAIMS

Each of the Sections under B should include in very brief outline the following points in so far as they are applicable:

- *Appropriate court for claim and method of initiation of claim.*
- *Claims by and against more than one party. Availability of third party proceedings.*
- *Method of pre-trial definition issues. Counterclaims procedure.*
- *Pre-Trial conservatory remedies available for this kind of claim and method of applying for such remedies.*
- *Pre-Trial hearings including applications for summary judgment, orders obtainable, how enforced.*
- *Pre-Trial discovery/depositions – procedures.*
- *Other pre-trial procedures, such as orders for exchange of experts' reports, witness statements, legal submissions or briefs.*
- *Pre-trial investigatory procedures by the court or court experts.*
- *Trial dates.*
- *Preparation of evidence: how the evidence of typical witnesses for that type of claim is brought before the court, signed statement, sworn evidence, oral evidence. Special treatment of expert evidence. Evidence of foreign law, proof of documents and assessments of damages.*
- *Conduct of trial, speeches, giving evidence, judgment, damages and interest costs.*
- *Appeals procedure and conduct of appeals. Whether fresh evidence admissible. Costs of appeal.*
- *Enforcement of the judgment against defendant within the jurisdiction.*

(1) CLAIMS FOR BREACH OF CONTRACT FOR SALE OF GOODS

(2) CLAIM FOR RIGHTS IN MINERAL CONCESSION IN THE JURISDICTION

(3) CLAIM FOR TITLE TO OR DAMAGE TO GOODS IN THE JURISDICTION IN QUESTION

(4) CLAIMS FOR MONIES DUE UNDER INSURANCE/REINSURANCE CONTRACTS

(5) CLAIM TO ENFORCE CORPORATE SHARE-SALE TRANSACTION

(6) CLAIM TO ENFORCE COPYRIGHT/TRADEMARK

(7) CLAIMS TO AN INTEREST IN A BANK DEPOSIT

(8) CLAIM FOR RECOVERY OF CHARTER HIRE/DAMAGES UNDER A CHARTERPARTY

(9) CLAIMS FOR AMOUNTS DUE UNDER A JOINT TRADING VENTURE AGREEMENT

(10) ARREST OF SHIPS

(11) ENFORCEMENT OF FOREIGN JUDGMENTS

(12) ENFORCEMENT OF FOREIGN/DOMESTIC ARBITRATION AWARDS