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FOREWORD

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Four years have now passed since the publication of the first edition of this book. Despite the generally improving economic outlook, the significant increase in commercial litigation remains evident, partly still caused by the previous financial crisis.

The growth of cross-border commerce means that jurisdictional principles have become more important as litigants are increasingly likely to find themselves involved in disputes in jurisdictions unfamiliar to them. They and their usual lawyers may have limited, if any, understanding of how the local legal system works. Sophisticated litigants are also increasingly aware of the benefits of bringing a claim in a jurisdiction more favourable to their cause of action, even if that means litigating in unfamiliar territories. It is therefore now more important than ever for parties and their advisors alike to be able to obtain an overview of the way litigation is conducted around the world.

Since the publication of the first edition, there have been a number of other noticeable trends. One is the increasing level of case management in commercial litigation undertaken by the courts in our own jurisdictions to attempt to avoid delay and reduce costs. The imposition of stricter time limits requires parties and in turn their lawyers to ensure resources are better managed.

The need to find cost-effective routes to the resolution of commercial disputes also remains a key trend. The market for mediation and other alternative dispute resolution services continues to expand, and arbitration remains popular for disputes arising out of cross-border commerce and investment. Insurance products relating to the costs of litigation have been available for some time in our jurisdictions, and here and elsewhere there is also a third party funding market.

The contributors to this second edition are all leading lawyers in their jurisdictions and are ideally placed to provide practical, straightforward commentary on the inner workings of their respective legal systems. Their kind contributions are greatly appreciated by us. We have been particularly pleased as general editors to have been able to gather such a breadth of contributors for this new book, from just about every major jurisdiction in the world. We express our thanks to all those at Sweet & Maxwell who have worked tirelessly to bring together the chapters and have assisted hugely in the editorial process.

As with the previous edition, a work of this nature will not allow for in-depth analysis or provide solutions for every problem encountered by litigants. The book is intended rather to provide a first port of call so that readers can start to appreciate the approach of the courts in each jurisdiction to commercial litigation and better understand both the procedure they adopt and how the dispute will be resolved in practice.

We hope this book will assist all who come to use it, and will be happy to receive suggestions for future editions.

Andrew Horrocks and Maurice Phelan, London and Dublin, September 2015

and 20% of the amount of the process. The attorneys' fees of the losing party will be determined between 7% and 17% of the amount of the process.

According to section 6 of the Attorneys' Fees Law, to determine the amount of the fees, the following guidelines shall be considered:

- The amount involved in the proceeding.
- The nature and complexity of the case or proceeding.
- The result that has been obtained, and the relationship between the professional management of the case and the likelihood of satisfaction of the claim by the losing party.
- The quality, effectiveness and extent of the work.
- The performance with respect to the principle of celerity.
- The legal, moral and economic importance of the matter or the proceeding for future cases for the client, and the economic situation of the parties.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

There are no restrictions on lawyers entering into "no win, no fee" agreements with their clients. Section 4 of the Attorneys' Fees Law provides that attorneys may agree with their clients that the fees for their activity in one or more matters or proceedings are linked to the success and outcome of the case.

In such cases, fees may not exceed 40% of the economic result obtained without prejudice to the attorneys' right to collect fees ordered to be borne by the losing party.

When professional involvement in the outcome of the proceeding is higher than 20%, expenses that may correspond to the client's defence and the client's responsibility for the court costs shall be borne by the attorney, unless otherwise agreed.

Social security, maintenance and family matters shall not be subject to these kinds of agreement.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

There are no express provisions in this regard, thus there are no specific restrictions. In cases of third party funding, the general rules on law concerning obligations and contracts will be applicable between the third party and the plaintiff.

Furthermore, it should be noted that a party may assign to other party contested rights and/or claims (*section 1446, NCC*).

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

In Argentina, civil liability insurance covers the cost of legal expenses, such as attorneys' fees. Legal expenses insurance is an additional coverage within the scope of civil liability insurance but is not considered an independent insurance (that is, the insurer is obliged protect the insured from all liabilities, claims, costs, losses, which means that it must bear the legal costs and expenses of the proceedings).

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

As stated in *Section 6.4* above, the judgment shall determine which party has to bear the costs of the proceeding (for example, the fee for access to court, experts' and attorneys' legal fees and costs, mediation proceeding's cost).

The general principle is provided in section 68 of the NCCCP, which states that the losing party shall bear all court costs, including those incurred by the opposing party.

The NCCCP also establishes the exceptions to the general rule.

Section 68 of the NCCCP establishes that the court may find reasons to exempt the losing party, either fully or partially, from the obligation to pay the court costs. In this case, the court shall clearly explain the reasons for such decision. The exemption encompasses the expenses incurred by the prevailing party, but the defeated party must bear its own costs and half of the common expenses.

As an additional exception, section 70 provides that the court costs may be charged to the plaintiff where the defendant admits the claim before submitting an answer to the complaint, whenever such admission is real, unconditional, timely, total and effective.

When the outcome of a lawsuit is partially favourable to both parties, the court may compensate the costs incurred by one of the parties with those incurred by the other party, or distribute the total costs between the parties. In both cases, the party which is more successful will pay less.

When either party incurs *in plus petitio* (excess in what is required), given certain requirements, such party has to bear the costs. When the proceeding is annulled by the act or omission of any party, such party must bear the costs incurred from the act or omission.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

Section 348 of the NCCCP establishes that when the plaintiff does not have both domicile and assets in Argentina, the defendant may raise a special motion (an *arraigo*) at the time of answering the complaint. It is intended to provide security by the plaintiff for court costs in case it has to bear them. If the first instance court considers that the special motion is admissible, it shall require from the plaintiff the provision of a security. The security bond may be real (mortgage, pledge, money) or personal (guarantor). The amount of bail is at the discretion of the court, but it must be determined in relation to the amount claimed in the complaint.

In addition, the NCCCP establishes a proceeding by which the plaintiff, before or together with the submission of the complaint and until the preliminary hearing, may request from the court the right to litigate *in forma pauperis*, that

- Trials of lawsuits should follow the chronological order of their filing in courts.
- The restriction of admissibility of interlocutory appeals, which will be allowed only against specific categories of interlocutory decisions, such as those that rule on the merits of the controversy, injunctions, denies the existence of an arbitration convention.
- The necessary compliance of judges and local appellate courts to binding judgments of the Brazilian Supreme Court and the superior courts.
- The possibility of rendition of partial awards.
- The stipulation of judicial attorney fees on behalf of the winning party's attorney in appeals, to be paid by the losing party, which is expected to stimulate a more rigorous analysis by parties and their lawyers about the likelihood of success of an appeal before its filing.

Some changes brought by the new CPC will specifically benefit lawyers, such as:

- Suspension of the time limit for filing petitions and appeals in the period between 20 December and 20 January.
- The reckoning of time limits considering only working days.
- The elevation of attorney's fees to senior credits, allowing them to take precedence over other credits, if not paid, and to be immune from garnishment if the lawyer is in debt.
- The extinction of offsetting adverse legal fees if both parties are partially defeated in the lawsuit.
- The possibility of assigning legal fees to law firms rather than individual lawyers.
- The said creation of specific legal fees in the appellate phase.

Therefore, it is estimated that the new CPC will bring significant advances to the practice of law and administration of justice in Brazil, particularly with regard to the faster and more predictable resolution of cases, and the improvement of work conditions of lawyers. Furthermore, since the new CPC is likely to enhance constitutional guarantees, rationalise procedure and strengthen jurisprudence, it will particularly benefit parties that litigate in Brazil.

1. COURT STRUCTURE

The structure of the Brazilian legal system follows the civil law system, so Brazilian codes and acts are generally long and detailed. Even the federal constitution (CF), the supreme law of the country, which has been in force since 5 October 1988, is characterised by its rigid written form. It has 250 articles.

The judiciary in Brazil is organised into federal and state branches, and the judicial system consists of several courts (state and federal courts). The apex is the Supreme Court of Justice – the guardian of the CF. The Superior Court of Justice is responsible for upholding federal legislation and treaties.

The federal jurisdiction is mainly responsible for:

- Cases in which one of the parties is the union (state).
- Lawsuits between a foreign state or international organisation and a municipality or a person residing in Brazil.
- Cases based on treaties or international agreements of the union against a foreign state.

The state jurisdiction in Brazil is responsible for cases that do not concern the federal judicial ordainment.

Although court decisions are essentially based on what the law states, it is valuable to highlight that the courts also research doctrine and judicial precedents. In fact, precedents are gaining in importance daily in the Brazilian legal system. As a result, precedents are becoming progressively uniform. For example, the Superior Court of Justice has created an instrument to facilitate the judgment of similar cases (*recursos repetitivos*) by rendering a decision in one such case that will be binding in the others. As highlighted in the introduction, the new CPC that will come into force on 17 March 2016 is expected to strengthen the system of precedents in Brazil.

In commercial litigation, the main rule applied is the Civil Code (CC), which regulates contracts, acts and civil obligations, and contains more than 2,000 articles. The CPC, with 1,220 articles, governs litigation, guiding the judicial procedure, stating the proper form for acts, procedural terms and pertinent appeals.

As outlined below, the Brazilian procedure for commercial litigation involves a peculiar proceeding, with different steps and requirements that must be accomplished so that the process can be steadily developed until it reaches a final judgment.

2. PRE-ACTION

2.1 Are parties to potential litigation required to conduct themselves in accordance with any rules prior to the start of formal proceedings?

Article 5, item XXXV of Brazil's CF fundamentally guarantees unlimited judicial relief to anyone suffering an injury or threat to their rights. Therefore, there is no mandatory pre-procedural phase or law that prevents parties to immediately commence a formal proceeding, as it is not compatible with the referred fundamental guarantee. However, during the legal process the judge must encourage a settlement at any time, as stated in Article 125, item IV of the CPC. As said in the introduction, the new CPC will increase the importance of settlements such that, if one of the parties manifests an interest in settling, then a mediation or conciliation hearing will be scheduled before the defendant presents his or her response.

2.2 Are there any time limits for bringing a claim? If so, what are they?

Brazilian law asserts "prescription", which implies that a party is barred from bringing a claim after the statute of limitation expires, as outlined mainly in Article 205 of the CC. The time-frame varies from one to ten years, depending on the cause of action. The law also lists the possible causes for suspension, interruption and prevention of the prescription.

2.2 Are there any time limits for bringing a claim? If so, what are they?

The Limitations Act, 2002, SO 2002, c 24, Sch B is Ontario's general limitations statute and applies to most commercial disputes, subject to other statutory limitation periods which may be applicable. The basic limitation period is two years from the discovery of the claim (that is, the date on which the plaintiff knew or ought to have known of the facts giving rise to the claim), and the ultimate limitation period is 15 years after the date on which the events giving rise to the claim occurred.

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

Proceedings are commenced by an originating process issued by the court registrar, and must be by way of an action unless the Rules or a statute provide that the proceeding may be commenced by an application (for example, where it is unlikely that there will be any material facts in dispute).

An action is commenced by issuing a statement of claim, which pleads the causes of action and material facts in support of the claim. Where there is insufficient time to prepare a statement of claim – for example, where the expiration of a limitation period is imminent – a notice of action which contains a short statement of the nature of the claim may be issued, which must be followed by a statement of claim filed within 30 days. The main stages of an action, including documentary and oral discovery and trial, are discussed in *Section 3.2* below.

An application, which follows an expedited procedure and is often used for urgent matters, is commenced by issuing a notice of application and will be determined on the basis of sworn evidence, on which the affiants may be examined out of court.

The plaintiff or applicant must serve the statement of claim or notice of application in accordance with the Rules; the former must be served within six months of issuance and the latter at least 10 days before the hearing. The originating process must be served personally on the defendant or respondent, or by an alternative to personal service as provided by the Rules. Leave is required to serve the originating process outside of Ontario, except as provided by Rule 17.02.

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

In an action, there are four principal steps to trial.

The first step is the exchange of pleadings. Once the statement of claim has been issued and served, the defendant has 20 days to serve and file a statement of defence. The filing period is longer where the defendant is served outside of Ontario. A defendant may extend the filing period by 10 days by delivering a notice of intent to defend. If a defence is not filed in time, the plaintiff may seek a default judgment. A defendant may counterclaim against the plaintiff, and the counterclaim must be included in the defence. A defendant may also bring a crossclaim for contribution against a co-defendant. Parties and/or claims may be joined in the same proceeding unless it will unduly complicate or delay the hearing, or cause undue prejudice to a party.

The plaintiff is permitted to file a reply to the defence where it intends to prove a version of the facts which is different from that pleaded in the defence, and which has not been pleaded in the statement of claim.

Following the close of pleadings, amendments to the pleadings may only be made with the consent of the parties or the leave of the court.

As discussed in *Sections 3.3 and 7.1* below, a motion for the determination of a question of law before trial or to stay or strike a pleading may be made promptly after the commencement of proceedings and may result in the disposition of some aspects of the dispute before trial.

The second step is documentary and oral discovery (*discussed further in Sections 4.1 and 5.1 below*). The parties must agree to a written discovery plan within 60 days of the close of pleadings and prior to attempting to obtain any evidence through documentary or oral discovery. The discovery plan sets out:

- The intended scope of the documentary discovery.
- A timetable for the service of affidavits of documents, the exchange of productions and examinations for discovery (including the length).
- Any other information "intended to result in the expeditious and cost-effective completion of the discovery process that is proportionate to the importance and complexity of the action" (*Rule 29.1.03*).

In Toronto and Ottawa, parties to certain actions are required to participate in a mandatory mediation session within six months of filing the statement of defence.

The third step is setting the action down for trial, which requires the parties to serve and file a trial record (comprising pleadings, any demands for particulars and responses, any notice of amounts or particulars of special damages, and any other documents required by the Rules). No interlocutory motions or further discovery may be initiated or continued once the action has been set down for trial without the leave of the court.

The fourth and final step is the pre-trial conference, held before a judge or case-management master within 180 days after the action is set down for trial. The purpose of the pre-trial conference is to provide "an opportunity for any or all of the issues in a proceeding to be settled without a hearing and, with respect to any issues that are not settled, to obtain from the court orders or directions to assist in the just, most expeditious and least expensive disposition of the proceeding" (*Rule 50.01*). If the action is not settled at the pre-trial conference, a trial date will be fixed.

The main steps for an application differ. Once served with a notice of application and supporting affidavit evidence, the respondent must deliver forthwith a notice of appearance to preserve his or her rights to file responding evidence and arguments, cross-examine on an affidavit, or be heard at the hearing. Following the delivery of the responding affidavits, out-of-court cross-examinations on the affidavits are usually held prior to the hearing.

3.3 Is it possible to expedite the normal timetable to trial? If so, how?

The parties bear the primary responsibility for managing the proceeding and moving towards a final disposition in an expeditious and cost-effective manner, and may be penalised for failing to do so. For example, a defendant may move to dismiss an action for delay where the plaintiff has failed to take certain procedural steps within the

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

Ontario's Solicitors Act RSO 1990, c S.15 permits lawyers to enter into contingency fee arrangements in civil proceedings, subject to strict requirements. The lawyer has a duty to explain to the client other available payment options and how the fee is to be determined. The arrangement must be made in writing and signed by both the lawyer and client, and must expressly provide that the lawyer's recovery will not exceed the amount the client receives in damages or through settlement.

Lawyers may also enter into agreements which contemplate the payment of a success or uplift fee depending on the outcome of the case.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

In Ontario, third-party funding is available subject to the principles of maintenance and champerty, although it is relatively novel and is used primarily in class action proceedings. In determining whether to approve a third-party funding agreement in a class action proceeding, the court will consider whether:

- The lawyer is clearly understood to be acting in the best interests of the client, rather than the funder.
- The agreement is so transparent as to ensure there is no abuse or interference with the administration of justice.
- The amount ultimately payable to the funder is just and reasonable.

(*Fehr v Sun Life Assurance Co of Canada 2012 ONSC 2715*)

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

While insurance may be available, it is not common in Ontario.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

Ontario's "loser pays" costs regime means that costs are typically ordered in favour of the successful party. In exercising its broad discretion to determine whether to award costs and in what amount, the court may have regard to a number of factors in Rule 57.01(1), including:

- The amount the unsuccessful party could reasonably expect to pay.
- The amount claimed and recovered.
- The complexity of the proceeding.
- The importance of the issues.
- The conduct of the parties.

A successful party will not recover all of its costs and, in any event, cannot recover more than was actually spent on litigation. Costs may be ordered on three scales:

- Partial indemnity, which is the most common and usually represents less than half of the actual reasonable legal fees and disbursements incurred.
- Substantial indemnity, defined as 1.5 times the costs which would have been awarded on a partial indemnity scale and ordered where, for example, one party has engaged in unreasonable conduct or failed to prove serious allegations.
- Full indemnity, which is only ordered in exceptional circumstances.

Any party who intends to seeks costs must prepare and bring to the hearing a costs outline. Where a party is awarded costs, it may be required to serve a bill of costs on the other parties.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

On a motion by a defendant or respondent, the court may award security for costs where it is just to do so and one of the following prerequisites is met:

- The plaintiff or applicant is ordinarily resident outside Ontario.
- The plaintiff or applicant has another proceeding for the same relief pending in Ontario or elsewhere, or the defendant has an outstanding order for costs against the plaintiff or applicant.
- The plaintiff or applicant is a corporation or a nominal plaintiff, and there is good reason to believe the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant.
- There is good reason to believe the action or application is frivolous and vexatious, and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant.
- A statute entitles the defendant to security for costs.

If security for costs is ordered, the plaintiff cannot take any further steps in the proceeding until security is paid into court; failure to comply with an order for security for costs may result in the dismissal of the claim.

13. COLLECTIVE ACTIONS

13.1 Can claimants with similar claims bring a collective action against an alleged wrongdoer?

Class action claims may be brought in Ontario pursuant to the Class Proceedings Act, 1992, SO 1992, c 6 and must be certified by the court on a preliminary motion in order to proceed. The action will be certified where the representative plaintiff establishes that:

- The pleadings disclose a cause of action.
- There is an identifiable class of two or more persons.

practice will be affected by the newly adopted rules of disclosure, and the interaction between them and the general principle of burden of proof, which has been deeply rooted for decades in Chinese litigation.

Documents can be obtained from third parties, especially from government agencies and other governmental organs. A party may apply to the court for an order of investigation for the purpose of obtaining documents from third parties, especially governmental organs.

4.2 Are there any special rules concerning the exchange of electronic documents?

In the latest amendment of the PRC Civil Procedure Law of 2012, electronic data is enumerated as one of the categories of evidence (*Article 63*). The 2014 judicial interpretation defines this particular category as including e-mails, electronic data exchange, records of online conversations, blogs, texts sent by mobile phones, electronic signatures, web names and other information stored in electronic devices, including audio- and videotapes. However, there are no specific rules concerning the exchange of electronic documents. The general evidence rules apply to the electronic documents.

4.3 Can any documents be withheld from the other side or from the court?

There is no legal concept in Chinese law that is equivalent to the legal professional privilege in the Western legal system. As China does not implement a discovery or disclosure system, no rules, such as privilege rules, have been adopted to determine the exceptions of the discovery or disclosure of documentary evidence. A lawyer in China nevertheless assumes legal obligations to keep clients' private information and business secrets No lawyers have been called by courts to testify as there is no discovery or disclosure practice at all.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Witness evidence is one of the categories of evidence enumerated by the PRC Civil Procedure Law. Witness evidence is given by way of witness statement rather than deposition. However, the witness evidence will have legal effect only after the witness has been orally examined in the court hearing. The witness evidence covers facts in which the witness was personally involved or eye witnessed. A person who is unable to express him- or herself clearly cannot act as a witness. Witness evidence in Chinese commercial litigation is normally of low probative value compared to documentary evidence and tangible evidence, especially in circumstances where the witness is related to one of the parties in litigation through family or business connections.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Normally, witnesses are required to give evidence at trial. When a party applies for a witness to be called to the litigation, it should apply to the court for the oral giving of evidence by the witness before the closure of the term for evidence production. A court may also call a witness in specific circumstances provided by the PRC Civil Procedure Law. The witness is called to the court hearing after the judge gives approval. The judge will verify the witness's

identity, and the judge will tell the witness the legal consequences if he or she gives false statements of facts. The witness will state his knowledge of certain facts. The parties and the judge will ask the witness questions. The counsel of the other party may ask the witness questions in a way similar to cross-examination in some Western jurisdictions. If a witness lies in giving evidence, the court may impose a monetary fine on or the personal detention of the witness.

A court may hear oral testimony from experts or ordinary witnesses via teleconferencing, or any other remote live connection system, provided that such method is approved by the court in advance.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

The parties or the court cannot force a witness to attend court hearings, although the PRC Civil Procedure Law provides that any person or entity familiar with the facts of a civil case should give witness evidence.

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

There are two different types of experts that are permitted to be used by the parties in the proceedings: the evaluation expert (a complementary assistant to the court) and the "person with professional knowledge" (a witness for one side).

The expert evaluation opinion is one of the types of legal evidence under the PRC Civil Procedure Law. A party may apply to the court for expert evaluation on specific issues concerning facts. In such case, the two parties shall choose the evaluation expert by mutual consent. If no agreement can be reached, the evaluation expert shall be appointed by the court. Also, if a court deems it necessary for certain specific issues to be evaluated by an expert, it can appoint an expert on its own initiative. The evaluation expert shall then provide a written evaluation opinion to the court.

In addition, the parties may apply to the court to notify "persons with professional knowledge" to appear before the court and issue opinions on the expert evaluation opinions issued by the evaluation expert or other professional issues. In practice, a party can also ask "persons with professional knowledge" to issue a written opinion and submit it along with other evidence.

6.2 Do parties exchange expert evidence prior to trial? If so, how and at what stage in the proceedings?

If written opinions from "persons with professional knowledge" are included in evidence submitted by the parties as required by the notice for producing evidence, they will be exchanged, provided that the court arranges such exchange or a pre-trail conference before the court session.

6.3 Do experts give evidence at trial? If so, how?

In order for "persons with professional knowledge" to appear before the court, a party must apply to the court before the period for evidence production expires. The "persons with professional knowledge" will then appear before the

- For claims in contract, there is a six-year limitation period from the date when the cause of action accrued.
- For claims in relation to mortgage or pledge agreements, there is a 12-year limitation period from the date of the accrual of the cause of action.
- For claims in relation to bills of exchange and so on, there is a six-year limitation period from the accrual of the cause of action.
- For causes of action for which no particular provision is made with regard to limitation in Law 66(I)/12 or in any other law, there is a general ten-year limitation period from the accrual of the cause of action.

The above limitation periods may be extended by two years if the court considers this to be just and reasonable.

The transitional provisions of the law provide that, for causes of action accrued prior to 1 July 2012, which would have been time-barred under the provisions of the law, proceedings can be brought by 31 December 2015.

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

Civil proceedings must be commenced in the district courts. The rules determining which district court has jurisdiction to hear a claim are complex and depend on the nature of the claim. For certain claims, the specialist courts have exclusive jurisdiction.

The proceedings are commenced by filing a writ of summons with the registry of the competent district court. The writ of summons is issued once it has been filed with and sealed by the registrar of the court, at which point the proceedings formally commence.

The writ of summons may either be (i) generally indorsed, and thus includes merely the relief or remedy sought and states the cause of action upon which it is claimed or (ii) specially indorsed, and thus includes a statement of claim, providing full particulars of the relief sought in addition to stating the relief or remedy sought and the cause of action upon which it is claimed. For certain causes of action, such as fraud, the writ of summons must be generally indorsed. Summary judgment applications can only be made if the proceedings were commenced by a specially indorsed writ of summons. The statement of claim or other pleadings shall be statements of facts and should not have evidence attached or elaborate on the law.

After the writ of summons is issued, it shall be served upon the defendants in the proceedings. Service of the writ of summons shall be effected by personal service, namely by leaving a copy with the person to be served, via a private bailiff. The writ of summons must be served within 12 months from its filing. If personal service is not feasible, an application can be made to the court for an order for substituted or other service.

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

After the writ of summons has been issued and served, the defendant must file a notice of appearance within ten days of the receipt of the writ of summons and serve it upon the claimant.

Where the claimant has filed a generally rather than a specially indorsed writ of summons, he shall then file and deliver within ten days from receiving the notice of appearance a statement of claim, particularising the relief sought and the basis upon which that relief is being sought.

The defendant shall file and deliver within 14 days from filing the notice of appearance where a specially indorsed writ of summons was filed, or within 14 days from the delivery of the statement of claim where a generally indorsed writ of summons was filed, a statement of defence and counterclaim (if any). The claimant may then file and deliver a reply within seven days from the delivery of the statement of defence.

The defendant may also apply for leave of the court to issue and serve a "third-party notice" against a third party whenever the defendant claims that he or she is entitled to a contribution or indemnity from or any relief/remedy against the third party relating to or connected with the original subject matter of the action and being substantially the same as some relief/remedy claimed by the claimant. An application for leave to file and serve a "third-party notice" may be made after the filing of the notice of appearance and within a month after the filing of the statement of defence.

After the pleadings are closed, the case will be set for directions before a judge by virtue of an application of one or all of the parties, or by the court on its own motion. The case management period follows, during which a judge issues procedural directions, examines interim applications (such as discovery and inspection of documents, amendment of pleadings) and explores the possibility of settlements. The whole case management process, including the procedure and the time-frame, is controlled by the judge, though the parties normally assume an active role by making suggestions and assisting the court to move the case forward.

Upon completion of all the steps necessary to prepare the case for trial, the case is set for hearing. The trial of the main proceedings will then take place, upon the completion of which the judge will issue his or her judgment.

About 97% of all cases filed are tried or settled within one year. For the rest of the cases, which proceed to full hearing on the merits, the underlying time-frame for completing the main proceedings is between two and four years.

However, due to recent amendments in the Civil Procedure Rules (CPR), in relation to claims filed after 1 January 2015, the regime has been changed. Now, within 30 days from the date the pleadings are closed, the claimant will have to issue a notice for directions, which must be served on all other parties and be set before a judge after 60 days. Within 30 days from service of the notice for directions, the parties shall file an appendix indicating the directions sought from the court. At the appearance before the judge, the directions on the matters noted by the parties in their appendices may be issued and the case will be set for directions regarding the evidence to be filed with the court. With respect to claims the value of which does not exceed EUR 3,000, the judge will issue directions for filing written evidence and the case will be set for hearing on the basis of the written evidence with written or oral submissions. In those cases, the judge will allow oral evidence to be adduced only on rare occasions. With respect to all other claims, the parties shall file with the court a list of their proposed witnesses at trial together with a summary of the evidence to be given by each, and the judge will issue further directions for the preparation of the case prior to trial. The judge will make an order for written evidence to be filed upon the agreement of the parties and the hearing will take place on the basis of that evidence, though the judge will allow the parties to examine, cross-examine and re-examine witnesses. The new provisions further provide for strict deadlines regarding

that there is a strong chance of success in the litigation. Payment of the ATE premium may be deferred until the conclusion of the case and, if the insured party loses, it may never be payable. Although previously the premium was recoverable from the other side if the insured party won the case, this is no longer the case in relation to most policies issued after 1 April 2013 following reforms to the recoverability rules.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

The court can, and indeed generally will, order the losing party to pay the winning party's costs to the extent that those costs are proportionate and were reasonably incurred and reasonable in amount.

In practice, the winning party will typically be entitled to recover between 65% and 80% of their own lawyers' costs. As well as paying the winning party's legal costs, the losing party is, in principle, required to pay any disbursements the winning party has incurred (for example, an expert's fees or court fees). However, save in relation to historic agreements and certain excluded categories of cases, such as insolvency cases, ATE policy premiums and uplifts charged under conditional fee agreements are no longer recoverable.

The court will consider all the circumstances of the case when determining the liability for costs, including the conduct of the parties, how successful the winning party actually was and whether any offers to settle have been made. The court may dispense with the requirement that costs should be proportionate in order to penalise the losing party. Equally, the court may determine that it is appropriate for a costs order to be made whereby the losing party is required to pay only part of the winning party's costs or the costs only of a particular issue.

A party's ability to recover their costs will also be affected by the information that they have provided about those costs during the course of the claim. The rules now provide that all multi-track cases worth up to a fixed amount (£10 million at the date of writing) must be costs managed. This means that the parties must exchange costs budgets for the entire case at an early stage of the proceedings. The budgets can either be agreed by the parties or approved by the court with appropriate amendments, and the court will then manage the case by reference to the budget. When the court decides what costs can be recovered at the end of the case, it will have regard to the budget and will not depart from it unless it is satisfied that there is good reason to do so.

The usual rule is that interest is payable on costs from the date of the costs order. The court is permitted to award interest on costs from a date prior to the date of judgment in order to reimburse a party for the loss of interest on monies otherwise spent on paying legal fees. However, it will not permit a winning party to recover more than 100% of the costs they have actually incurred.

Although the trial judge will determine the basis on which costs are to be awarded, the question of precisely what costs can be recovered by the winning party will normally be determined by a specialist costs judge in a procedure known as detailed assessment, which involves examination of the winning party's bill.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

It is possible for a defendant (or a claimant who is defending a counterclaim) to seek an order for security for costs to protect against the risk that they will be unable to enforce any costs order in their favour that they may later obtain.

If such an order is made, the claimant will normally be required to pay a sum of money into court or provide some other form of security before the claim will be allowed to proceed.

In order to obtain such an order, it will be necessary to show that the defendant will face particular difficulty in enforcing a costs order, for example as a result of the claimant being resident out of the jurisdiction, on the basis that the claimant is a company and there is reason to believe it will be unable to pay the defendant's costs if ordered to do so, or on the basis that the claimant has taken steps in relation to its assets which will make it difficult to enforce an order for costs. The court will also need to be satisfied that it is just, in all the circumstances of the case, to make an order for security.

13. COLLECTIVE ACTIONS

13.1 Can claimants with similar claims bring a collective action against an alleged wrongdoer?

There are two main procedures for collective actions, but they are not regularly used and have been criticised as not offering sufficient or effective access to justice. Collective actions have therefore been the regular subject of proposals for reform, most recently in relation to private actions in competition law, where legislation has recently been enacted which will permit "opt-out" collective actions.

However, the first existing procedure available more generally is a representative action, under which a party can begin or continue a claim on behalf of a group of people who have the same interest in the claim, as a representative of that group. Any judgment or order will be binding on all the people represented. The "same interest" requirement means that the number of claimants that can make use of this procedure is limited.

The second procedure is known as a group litigation order (GLO), under which the court makes an order which enables claims of a certain type, specified by the court, to be dealt with and managed together. The claims must give rise to common or related issues of fact or law. It is necessary for a claimant to "opt in" by issuing a claim and then applying for the claim to be part of the group action. Judgments and orders will be binding on the claims within the GLO.

13.2 Is the procedure for bringing a collective action different to the procedure for a normal claim?

The procedure for a GLO may involve various changes to the standard court procedure. The biggest difference is that a managing judge will be assigned for the purposes of a GLO. That judge assumes overall responsibility for the management of the claims and can make case management directions which apply to all cases. These might include providing for one or more claims to proceed as test claims, or requiring that the solicitor of one of the parties be appointed as the lead solicitor for the claimants or defendants. The judge may also specify what details should be included in a statement of case so as to demonstrate that the criteria for entry into the group have been met. The GLO may also set a deadline by which claims must be issued in order to be part of the group action.

4.2 Are there any special rules concerning the exchange of electronic documents?

In France, Law No. 2000-230 of 13 March 2000, which adapts the law of evidence to information technology and in relation to electronic signatures, recognises the legal value of electronic documents and signatures.

Consequently, written evidence is now "evidence originating from a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, whatever the medium and mode of transmission".

Electronic documents are thus admissible as evidence in the same way as paper documents, if the author can be properly identified and if they are prepared and stored in a way that protects their integrity.

The law and decrees specify the practical conditions that electronic documents and electronic signatures must meet to be enforceable against third parties. Depending on the technical security level of the electronic process used and its recognition by the authorised departments of the state, electronic documentation can constitute evidence giving rise to rebuttable or non-rebuttable presumptions.

On 21 June 2013 (consolidated on 6 May 2015), a decree was passed that organises the conditions under which electronic communications can be used between lawyers and between lawyers and the jurisdiction in the procedure before the commercial courts. Lawyers access the system of electronic communication provided by the commercial courts by using the Private Virtual Lawyer Network (PVLN), which has a secure end point that allows an interconnection with the national exchange and the tracking platform i-greffe. Lawyers access the PVLN through an "e-Bar", which falls under the National Bar Council's remit.

4.3 Can any documents be withheld from the other side or from the court?

When dealing with a client verbally or in writing, a lawyer must maintain confidentiality with regard to the subject being discussed. A lawyer's duty of professional confidentiality is of a general, absolute and public order nature.

Verbal communications or written correspondence between lawyers is by nature confidential, so no disclosure by the recipient can be made and no correspondence between lawyers can be used, including in court.

The rules of confidentiality relating to exchanges between lawyers have the advantage of facilitating inter-party talks, which can lead to settlements. The parties may not assert the existence of such discussions before the court. It is, however, possible to "de-confidentialise" these exchanges in certain very strict and exceptional circumstances (essentially, correspondence between lawyers sent with the label "official").

Public hearings, document inspection

Commercial proceedings have three main features. They are public, and most importantly oral and adversarial.

The proceedings are public to the extent that anyone who so wishes can attend the hearings. However, the parties have the right to request that the case be heard in court chambers, that is, in private. In that case, the decision will be rendered in open court.

The proceedings are adversarial because, in its decision, the court can only take into account those submissions and documents that the opposite party has had the opportunity to discuss.

In theory, the entire procedure before the commercial court is oral. The claims of the parties are noted in the court file or recorded in minutes. Once the judgment is pronounced, the court does not retain the case evidence.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

The parties are required to exchange any testimonial evidence or witness statements to which they intend to rely in support of their claims. This communication to the court and the other parties must be completed before the oral hearing in order to enable each party to best defend its interests, in full knowledge of the opposing arguments.

This is the adversarial principle.

In order to be admissible before the commercial court, the witnesses' statements must fulfil the substantive and form conditions and must contain mandatory elements, such as the description of the facts that the author had attended to or that he or she had personally noted. The registrant is liable to fines and imprisonment penalties in case of perjury, according to Article 441-7 and subsequent of the Penal Code.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Evidence relating to a matter involving a sum greater than EUR 1,500 is in principle to be made in writing (*Article 1341, French Civil Code*). Notwithstanding this provision, Article 110-3 of the French Commercial Code states: "with regard to merchants, commercial instruments can be evidenced by any means unless the law provides otherwise", except for certain types of contract, such as partnership agreements (*Article 183, French Civil Code*) and sale and pledge of a business (*Article L 141-5, French Commercial Code*). Invoices are obligatory.

Procedural law provides that the parties may submit written statements to the judge. To ensure fidelity, the statement must:

- Come from persons who have directly witnessed what is being attested to.
- Be accompanied by an identity document.
- Specify that it has been prepared in contemplation of its production in court.
- Be handwritten and signed.
- State the address and marital status of the signatory, and his or her relationship with the concerned parties.
- Relate the facts to which its author has been a witness or has personally observed.

It should be stated that the witness must understand that he or she is testifying in court and that perjury is a criminal infringement.

ZPO, Rn 16). In such a case, the claim will come to an end either by withdrawal or by a mutual declaration of termination.

7.2 What ADR procedures are available?

In accordance with the German code of civil procedure, there are a number of ADR procedures available to the parties. Generally, parties are free to agree whether they want to resolve the conflict through out-of-court proceedings at any time, even during pending proceedings. If one party applies for settlement proceedings to be conducted outside the court by a state-recognised arbitration committee, simply filing the application leads to suspension of the limitation period (*§§ 204 I, No 11 BGB, 1044, ZPO*).

Furthermore, optional out-of-court ADR proceedings are available to certain market segments. Those are often set up in a conflict between weak and strong market participants. Since these proceedings were set up for customer complaints against private banks in 1992, they are now regulated by statute through § 14 of the German Injunctive Relief Act (Unterlassungsklagengesetz) (*MüKoZPO/Rauscher ZPO Einleitung, Rn 59*). Out-of-court ADR proceedings are also relevant in medical law, insurance policy law, private building society law, copyright law and construction contract law (*MüKoZPO/Rauscher ZPO Einleitung, Rn 59*).

In each case, the parties can voluntarily opt for those dispute resolution proceedings. Nevertheless, there will often be a major incentive to do so as the stronger market participant must abide by the award and the weaker part is exempted from the costs (*MüKoZPO/Rauscher ZPO Einleitung, Rn 60*). It is also possible to agree on mandatory out-of-court dispute resolution proceedings, which is common between parties who are both acting in a professional or commercial capacity. With respect to such circumstances, an agreement is similar to an arbitration agreement because it has the effect that filing a claim before the ordinary courts is not permissible without first having attempted to resolve the matter through out-of-court proceedings (*MüKoZPO/Rauscher ZPO Einleitung, Rn 62*). However, unlike arbitration agreements, this agreement does not have the effect that the parties are finally bound by the rendered award but leaves open the possibility of recourse to state courts in case that it is unsuccessful (*MüKoZPO/Rauscher ZPO Einleitung, Rn 62*).

7.3 Can the court compel the parties to use ADR?

Statute in 11 federal states of Germany requires obligatory out-of-court settlement proceedings in advance of a claim. The most relevant examples are if the value of the matter in dispute is less than EUR 750 or the only ground for the plaintiff's claims is an infringement of his ir her personal honour (*§ 15a, EGZPO*).

8. TRIAL

8.1 What are the main stages of a civil trial? How long would a significant commercial litigation trial last?

The court will forward the statement of claim once it has been filed by the plaintiff with the court. It will then grant the defendant a deadline for informing the court of his or her intention to defend against the claim and to file a statement of defence.

The court will then schedule a date for the hearing and will also likely grant the parties additional deadlines to reply to their respective latest writs prior to the hearing.

The oral hearing is generally preceded by a conciliation hearing unless an attempt at reconciliation before an arbitration committee has already been made or there is evidently no reasonable chance for a settlement (*§ 278 II 1, ZPO*). At this stage of the trial, the court has to discuss the circumstances and facts as well as the status of the dispute with the parties (*§ 278 II 2, ZPO*).

If the conciliation hearing is not successful, the actual hearing begins. Here the parties refer to the petition in their written statements (*§§ 137 I, 297, ZPO*) and legal aspects of the case are discussed (*§§ 136 Abs 2, Abs 3, 139 Abs 1, ZPO*). Subsequently, the evidence is heard (*§ 279 II, ZPO*).

If the court comes to the conclusion that further hearings or evidence are necessary, it will schedule another date for the hearing's continuation (*MüKoZPO/Prütting ZPO § 279, Rn 20*).

The time-frame depends on how many witnesses are heard and whether legal discussions or settlement negotiations are necessary. A hearing in a significant commercial litigation trial that involves witness statements will last approximately one to two hours. If the court finds that a decision can be made, a date for the judgment will be fixed (*§ 310 I 1, ZPO*). The judgment should be rendered within three weeks after the hearing; a longer period for the rendering is only permitted in case of important reasons (*§ 310 I 2, ZPO*). Reaching a judgment directly after the trial only happens in very rare cases. While the civil procedure code envisions that judgments are generally rendered to the parties by an oral presentation (*§ 311 II 1, ZPO*), in practice, they are usually sent to the parties by mail (*§ 311 IV, ZPO*). Judgments have to be in writing and must include certain information, such as the date of the hearing and the names of the judges that were involved (*§§ 311, 313, ZPO*). In addition, it has to include the facts and the reasons on which the ruling is based (*§ 313 I, No 5/6, II, III, ZPO*). The decision itself has to be worded in a way suitable for enforcement (*MüKoZPO/Musielak ZPO § 313, Rn 6*).

8.2 Are civil court hearings held in public? Are court documents available to the public?

The hearing before the court, including the pronouncement of judgments and rulings, is generally held in public (*§ 169 S 1, GVG*). Only a few exceptions are made to this principle, for example, in family matters and in non-contentious matters (*§§ 170 to 176, GVG*). Audio, television or radio recordings are not allowed (*§ 169 S. 2, GVG*).

Upon request, the parties can inspect the court documents of the dispute and have the court issue copies (*§ 299 I, ZPO*). Third parties can only be granted access to the court documents by the court's president if they have successfully demonstrated a legitimate interest (*§ 299 II, ZPO*).

9. REMEDIES

9.1 What are the main remedies available prior to trial? In what circumstances can such remedies be obtained?

The German civil procedure code provides for two different preliminary remedies: the plaintiff can either apply for an arrest order (*§ 916, ZPO*) or an interim injunction (*§ 935, ZPO*). The aim of an arrest is to secure the future

A judgment may be enforced against a judgment debtor's realty through a customary law procedure known as "saisie". It is usual for a judgment creditor to enforce first against a debtor's personalty as, once he or she elects to enforce against the debtor's realty, he or she extinguishes any right he or she has to pursue the debtor's personalty.

11. APPEALS

11.1 Is it possible for a defeated party to appeal a decision after the close of trial? In what circumstances will a party be allowed to appeal?

Appeals are made from the Royal Court to the Court of Appeal, and from there to the Privy Council.

Leave to appeal to the Court of Appeal must be obtained where the order appealed is a consent order or an interlocutory order, or where the value of the matter in dispute does not exceed £200. Leave must be sought in the first instance from the presiding judge and, if refused, the application may be renewed to the Court of Appeal.

The grounds on which an appeal may be brought are that:

- The judge was wrong in law.
- The decision was unjust as a result of a serious procedural or other irregularity (for example, the jurats' findings of fact were inconsistent with the evidence, there was insufficient evidence to reach a finding).

No appeal lies from a decision of the Court of Appeal without the leave of the Court of Appeal or the special leave of the Privy Council. Very few decisions are appealed to the Privy Council, and leave will only be granted where there is a point of public or general importance, or an important point of law is raised.

11.2 What is the basic procedure for an appeal?

The procedure to be followed in the appeal process is set out in the Court of Appeal (Civil Division) (Guernsey) Rules, 1964. Appeal is by way of a re-hearing, except where a new trial is sought. The appellant must lodge and serve a notice of appeal within one month of the decision to be appealed being pronounced (that is, when the decision is given by the Court, not when the written judgment is handed down). If the respondent wishes to cross-appeal, then he or she must serve a respondent's notice within 14 days. The appellant must also apply for the appeal to be set down within seven days of service of the notice of appeal, and then has a period of four months to lodge with the Court its appellant's case and the documents on which it proposes to rely. The respondent then has one month to lodge his or her response. The Court must then give at least 21 days' notice of the date of the appeal hearing. The Court has power to abridge these time periods if it considers it just.

The Court of Appeal will consider the whole of the evidence given in the Court below and may affirm the decision of the Royal Court on the same or a different basis, or may overturn the decision.

The procedure for appeals to the Privy Counsel is set out in the Judicial Committee (General Appellate Jurisdiction Rules) Order 1982, which was registered in Guernsey in 1983. There is no specific time limit within which an application for leave to appeal must be made, save that it must be made within a "reasonable" length of time.

12. COSTS/FUNDING

12.1 How are legal fees ordinarily charged to a client? On an hourly rate?

Guernsey advocates will typically charge clients on the basis of an hourly rate for litigation matters.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

Yes. Guernsey advocates are expressly prohibited by rule 38 of the Guernsey Bar's Rules of Professional Conduct from entering into any arrangement under which payment of a fee is contingent on success in the claim.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

As a general principle, it is permissible for a third party to fund a claim, subject to the rules of maintenance and champerty, which have not been abolished by statute or at common law in Guernsey. In deciding whether a third party funding arrangement is champertous or amounts to maintenance, the Royal Court is likely to follow English common law.

The Royal Court has wide power to make orders for costs, which will include the power to make costs orders against third party funders, although there has been no reported decision of the Royal Court on this issue as of yet. In making a costs order against a third party, the Royal Court is likely to draw a distinction between "pure" funders (that is, those who provide financial support without any contingent financial interest in the outcome of the case), who will not usually be liable for costs, and "professional" funders, who will.

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

There is no restriction as a matter of Guernsey law on the purchase of such insurance. It is most commonly in the form of legal expenses insurance as part of a wider policy or specialist "after the event" insurance (ATE), which is purchased after the event or events giving rise to the dispute have occurred. However, the premium paid for ATE insurance is not recoverable on a taxation of costs.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

By RCCR rule 82, the Court may make such order as to the costs of the proceedings, or of any stage or application of the proceedings as it thinks just. The general rule is that costs follow the event. However, the Court retains a wide discretion in awarding costs.

Costs will usually be awarded on the "recoverable basis". The rate of recoverable costs is set out in the Royal Court (Costs and Fees) Rules, 2012, as amended, which provide for a maximum recoverable fee for a Guernsey advocate based on an index-linked hourly rate. The maximum recoverable fee hourly for 2015 was set at £244 per hour. It should be noted that the Costs and Fees Rules refer specifically to a "Guernsey advocate", although it is now commonly accepted that where work is done by a non-advocate employee of a Guernsey firm then that employee's fees may also be recovered, albeit at a lower hourly rate. In *Ladbrokes Plc v Galaxy International Limited [2008]* it was confirmed that the Court has discretion to order that the costs of "foreign" lawyers are recoverable in

civil proceedings before a judicial authority, the judicial authority must refer the matter to arbitration if the other party invokes section 8 of the Arbitration and Conciliation Act, 1996.

- Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred, but two or three are also allowed.
- Mediation aims to assist two (or more) disputants in reaching an agreement. The parties themselves determine the conditions of any settlements reached, rather than accepting something imposed by a third party.
- Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution.
- Judicial settlement is through identifying a person or institution deemed to be a *Lok Adalat*.
- Another possible method of ADR can be undertaken through *Lok Adalats* (people's courts), organised under section 19 of the Legal Services Authorities Act, 1987. *Lok Adalats* may settle disputes between parties and make awards.

If, at any time during the pendency of the suit, the parties feel that they can settle the matter, they can do so through any of the modes mentioned above. Nowadays, the courts encourage parties to settle their disputes through these methods rather than litigating in courts for years.

7.3 Can the court compel the parties to use ADR?

The courts have no power to compel parties to use ADR, though it is highly advisable for the parties to resort to it. The advantages of ADR are that it is more flexible, less time consuming and less expensive, and that parties can avoid seeking recourse to the courts, which involves a lengthy and complex procedure. In conciliation, mediation, parties are free to withdraw at any stage in the process. The parties involved in ADR do not develop strained relations; rather, they maintain their existing relationship. The courts cannot impose sanctions on parties for failure to resort to ADR. The most a court can do is to refer the parties to arbitration or mediation/conciliation if it is so mandated by a clause in an agreement between the parties

8. TRIAL

8.1 What are the main stages of a civil trial? How long would a significant commercial litigation trial last?

A suit is instituted by means of a plaint, which is filed along with the requisite documents and the *vakalatnama*. The requisite court fee must be paid based on the valuation clause. The matters of jurisdiction and limitation must be considered when instituting any suit. Upon institution of a suit, the court issues a summons to the defendant. The defendant is required to file a statement of defence (written statement) within a period of 30 days from the date of service of the summons. This period may be extended by another 60 days if the court is satisfied that there is sufficient justification to do so. The plaintiff is then required to file his or her replication (reply to the written statement) in support of his or her case. The parties are at liberty to file any other supporting documents that they

wish in order to substantiate their case. After the completion of the pleadings, the next stage is the admission and denial of documents, whereby both plaintiff and defendant admit or deny the other's documents filed in the court. Thereafter, the parties exchange their proposed issues. Ultimately, the issues are framed by the court. The parties are then directed to file a list of their witnesses. The matter then proceeds to trial. Parties present evidence to substantiate their respective cases. This evidence is not restricted to documentary evidence only, but includes the witness evidence. The plaintiff leads his or her evidence by filing the evidence by way of affidavits of his or her witnesses. This is followed by examination-in-chief and then cross-examination of the plaintiff's witnesses by the defendant. The same procedure applies to the defendant. This completes the stage of evidence. The matter is then put for final arguments. Thereafter, the court hears arguments from both the sides and delivers a judgment.

If there is any application for interim relief, the court shall consider it before commencing the trial. If a party is aggrieved by the judgment, it has the rights of appeal and review.

A suit will take a few months to proceed to the trial stage. Several factors, including the intricacy of the case, the interests of the shareholders, the number of witnesses involved, the schedules of the judges and any backlog of cases at the court registry, have a bearing and determine the time that a commercial litigation shall take. The most important factor which can result in delay in commercial litigation is the lengthy and complex court procedure. However, the parties may file an application for an early hearing and the court may expedite the proceedings if it thinks fit.

8.2 Are civil court hearings held in public? Are court documents available to the public?

Civil court hearings are ordinarily held in open court. However, under exceptional circumstances, they may be held in camera. The parties to the lawsuit can have access to the court documents related to their case. They can inspect the court files and can obtain certified copies of the court orders, judgments or any other document related to their case on the payment of the requisite court fees. Members of the public have online access to the court orders, judgments and other details related to the case that have been uploaded onto the website of the respective court.

9. REMEDIES

9.1 What are the main remedies available prior to trial? In what circumstances can such remedies be obtained?

Courts have extensive powers to grant interim remedies. Order XXXIX of the CPC provides for temporary injunctions and interlocutory orders. In cases of extreme urgency, *ex parte* injunction may also be granted. Order XXXVIII, rules 5 to 13 of the CPC provide for attachment of property before judgment. Order XXXVIII, rules 1 to 4 of the CPC provide for arrest before judgment to secure the plaintiff against any attempt on the part of the defendant to defeat the execution of any decree which may be passed against him or her. The interim remedies include injunctions to maintain the status quo or to prevent a defendant from removing or disposing of property with a view to defrauding creditors and pre-judgment attachment of the assets of a defendant who has absconded or left the local limits of the court's jurisdiction, or, in some extreme cases, even when the defendant has not absconded but has removed property from the court's jurisdiction (or is about to do any of the foregoing) to delay and deny the plaintiff, avoid the process of the court, or obstruct or delay the execution of a decree that may be passed against him or her. Under Order XL of the CPC, a receiver may also be appointed to take charge of a property pending hearing and

- An order of garnishee may be sought, directing a payment due to the judgment debtor to be paid to the judgment creditor.
- A receiver by way of equitable execution may be appointed.
- In the Commercial Court, it is common for debtors to be promptly required to deliver a sworn statement of affairs in aid of execution and for wide-ranging orders to be made to assist a claimant in executing a judgment.

11. APPEALS

11.1 Is it possible for a defeated party to appeal a decision after the close of trial? In what circumstances will a party be allowed to appeal?

At least one level of appeal lies from the decision of all courts, usually to the directly superior court. The Supreme Court is the final appellate court.

There are various time limits which apply for the making of an appeal from the various courts and there is a developed body of jurisprudence about the ability to make an appeal out of time.

11.2 What is the basic procedure for an appeal?

The basic procedure is to serve a notice of appeal on the opposing parties specifying the grounds of appeal. Appeals from lower courts to the High Court or to the Circuit Court usually involve a full rehearing.

It is anticipated that appeals from the High Court to the Court of Appeal will generally be on a point of law, as there is only limited scope for the Court of Appeal to reconsider findings of fact.

12. COSTS/FUNDING

12.1 How are legal fees ordinarily charged to a client? On an hourly rate?

The amount charged is primarily a matter of contract between the client and his or her representatives. However, the High Court can exercise a supervisory jurisdiction and clients may ask to have their solicitors' and barristers fees reviewed by a Taxing Master of the High Court.

Often, in litigation, the client will engage a solicitors' firm, which will charge an hourly rate. However, the solicitor may charge based on the complexity of the matter, the urgency of the matter, the difficulty or novelty of the questions raised, the skill, labour, specialised knowledge and responsibility involved, the number and importance of the documents prepared or examined, the value of the case to the client, the time reasonably spent on the matter, and the places and circumstances in which the case is to be pursued.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

Lawyers may enter so-called "no win, no fee" arrangements with their client, so long as the lawyers' fees are not set in proportion to the quantum of any prospective damages award. Most personal injuries litigation is conducted on this basis for claimants.

Contingency fees are prohibited by statute in Ireland save where the claim is for a liquidated monetary amount. This arises most commonly in debt collection cases, where commission arrangements are common.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

Third-party funding arrangements are generally not permissible in Ireland as being contrary to the old common law doctrines of champerty and maintenance. The exception to this is where a party has a genuine interest in the litigation. A common example of this in a commercial setting is where a creditor of an insolvent company funds a liquidator to make a claim against directors or other parties for the benefit of the liquidation generally.

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

Legal expenses insurance is available in Ireland and commonly arises in professional indemnity cover in such professions as medicine, law and accountancy, and is also a common feature in directors' and officers' liability insurance policies. It is also possible for claimants to obtain opponents' legal costs insurance to insulate themselves from the costs of an unsuccessful claim.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

The general rule is that costs follow the event and the unsuccessful party is ordered to pay the successful party's costs (*Order 99, rule 1(4), RSC*). However, the court has discretion in this regard and can tailor costs awards in a number of scenarios. For example, costs may be apportioned when a party has been partly successful. Costs may not be awarded at all where a court takes a dim view of a successful party's conduct or has a particular sympathy for a losing party, or where the case is of exceptional public importance.

Where the party bearing the costs of the proceedings disputes the opposing side's costs, a breakdown of the costs will typically be produced in a reasonably detailed bill of costs, which will include legal fees. This information may then be reviewed by specialist legal cost accountants retained by the party bearing the costs. Generally speaking, the quantum of costs to be paid to the opposing side will be the subject of negotiations. Where no agreement can be reached, the amount will be determined by a Taxing Master of the High Court.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

The court may, upon application, make an order providing security for costs during the course of proceedings. Security for costs is sought in circumstances where a defendant seeks some comfort as to the plaintiff's ability to meet the costs of the proceedings should they be decided in the defendant's favour. However, this power must be balanced against the constitutionally protected right of access to the courts in Ireland. As such, where the plaintiff is an individual, security for costs may only be ordered, subject to other considerations, where:

- The plaintiff is not ordinarily resident in a member state of the EU or EEA.
- The defendant has established a prima facie defence to the claim.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Counsel are generally expected to interview the witnesses/parties on which they want to rely, and prepare and submit their written statements to the court and the opposing party. No system of conducting depositions exists to require the advance disclosure of witness evidence to the other party. Parties must exchange written statements usually at least a week before their examination, except where a difficulty exists, such as a potential witness refusing to cooperate with the party requesting examination. The purposes of exchanging the written statements of witness/parties prior to their examination are to shorten the time of direct examination and to enable the other party to prepare their cross-examination. The judges may request that the parties submit such written statements early enough to screen out the most important witnesses/parties to be examined to determine the disputed facts. The witnesses/parties are expected to describe what they have experienced, not their views, to the court.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Though Japan is a civil law system jurisdiction, the CCP adopts US-style, adversarial methods of examination of witnesses/parties. Counsel that requested the examination of witnesses/parties first conducts direct examination; cross-examination by counsel to the other party follows; and finally, counsel that requested the examination of witnesses/parties re-directs. Judges also interject questions for the witnesses/parties and continue questioning after counsel for both sides have completed their own respective questions (*Article 202(1), CCP; Article 113(1), RCP*).

Judges can hear statements of a witness/party who appears remotely from another courthouse convenient to the witness/party by using a video conference system if the witness/party resides in a distant location or remote appearance is necessary to protect the witness/party's interests, such as where the witness/party is a victim of a crime (*Articles 204 and 210, CCP*). If parties do not object, witness examination by way of a written statement is also available (*Article 205, CCP*).

If a witness makes a false statement under oath, the witness may be sanctioned for perjury and imprisoned for three months or more, but not exceeding ten years (*Article 169, Penal Law, Law No. 45 of 1907*). If a party makes a false statement under oath, the party will be sanctioned with a non-penal fine not exceeding JPY100,000 (*Article 209(1), CCP*).

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

A person who does not enjoy diplomatic or other extraterritorial immunity is obliged to appear before the court, swear under oath and provide testimony. If a witness fails to appear before the court without a justifiable reason, the court may charge the witness with the costs resulting from non-appearance, and impose detention and a penal/non-penal fine not exceeding JPY100,000 (*Articles 192(1), 193(1) and (2), CCP*). The court may issue a warrant for the arrest of an unjustifiably delinquent witness and have the prosecutor and police forcibly bring said delinquent witness before the court (*Articles 194(1) and (2), CCP*).

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

Parties are permitted to use experts in the proceedings to give opinions on matters that require special knowledge or experience. The CCP provides that the court is authorised to appoint experts (*Article 213, CCP*). However, it is permitted, and is common practice, for the parties to also retain their own experts to provide opinions to the court, even if the court does not appoint the court-appointed expert. Additionally, the parties occasionally retain their own experts to impeach the opinion of a court-appointed or another party-appointed expert who gave an opinion that was unfavourable to them.

6.2 Do parties exchange expert evidence prior to trial? If so, how and at what stage in the proceedings?

The court-appointed experts usually provide their opinion in writing, but they are permitted to give such opinions orally (*Article 215(1), CCP*). The party-appointed experts usually provide their opinions in writing, and the parties submit such opinions as documentary evidence. No deposition exists for experts.

6.3 Do experts give evidence at trial? If so, how?

The method of examining court-appointed experts is different from that used with ordinary witnesses/parties explained in *Section 5.2* above. The order of examination of court-appointed experts is: first, the presiding judge; second, the party who requested the expert opinion; and finally, the other party (*Articles 215-2(1) and (2), CCP*). This order of examination is different from that used with ordinary witnesses/parties because it helps mitigate unnecessary tension caused by counsel's cross-examination of the experts; overly antagonistic behaviour by counsel would make it difficult for courts to find good experts who were willing to provide opinions to courts.

Parties may request that party-appointed experts be examined orally as witnesses; however, the court will determine if such examination is necessary. In case the court decides to conduct examination of party-appointed experts, the method of examining the expert is the same as that used with ordinary witnesses/parties explained in *Section 5.2* above.

6.4 How are experts paid and are there any rules to ensure that expert evidence is impartial?

Court-appointed experts are entitled to receive both compensation for their services and reimbursement of necessary out-of-pocket expenses (*Articles 18(2), 26, CLCL*). No rules exist for compensation paid to party-appointed experts. If the experts, whether appointed by the court or by a party, are required to appear before the court, they will receive travel and lodging expenses and a daily allowance in accordance with the same rules that are applicable to ordinary witnesses (*Article 18(1), CLCL*). Either party may challenge a court-appointed expert if circumstances exist that would prevent the expert from giving opinions faithfully (*Article 214(1), CCP*).

- Receiving a cautionary measure to further assure assets prior to the final ruling.
- Challenging directly the formal aspects of the procedure in order to have the court dismiss the trial.

3.3 Is it possible to expedite the normal timetable to trial? If so, how?

There are only two possible ways to expedite the normal timetable to trial:

- When the defendant accepts the claims filed against him or her before the court, eliminating the general stages of the proceedings and obliging the court to rule and issue a final judgment.
- If the parties and judge accept and agree that there is no need to go through the evidence stage of the process to elaborate and present proof to the court on the claims, thus proceeding directly to the allegations stage, where final considerations and arguments are presented to court by both parties prior to the court's final judgment.

Note that some special proceedings, foreseen under their corresponding regulation, work in a much more expedited manner.

4. DOCUMENTARY EVIDENCE

4.1 Are the parties obliged to search for, retain or exchange documentary evidence prior to trial?

There is no obligation for the parties to search for, retain or exchange documentary evidence prior to trial. Nevertheless, once the proceeding has begun and the lawsuit has been filed before the court, the parties are obliged to exchange all the documents presented and filed to the court. Thus, a primal procedural principle is the exchange of documents between the parties for information and transparency purposes. This obligation must be met by any party that introduces a document to the court by annexing a set of copies of said document, which will be given to the counterpart.

All documentary evidence must be submitted and considered in the initial writ of the plaintiff's claim when starting proceedings. The defendant must also, at the time of response, offer and cite the evidence to be used in its favour. Both documentary packages will be dealt analysed and discussed by the court at a special stage of proceeding known in Mexico as the *etapa probatoria*. No party subject to the trial may offer any additional evidence other than that offered in the initial writ when starting proceedings or responding to the claim. The only reason for the court to accept any supervening evidence is if it is proven that the evidence was unknown or had not yet existed at the time the proceedings commenced. As the evidence must be exclusively presented by the parties, when the recollection of such evidence is impossible for one of the parties, that party may request the court to issue an order to a third party to provide the claimed evidence.

There are special commercial proceedings regulated by law that grant certain documentary evidence the presumption of legal certainty and validity. In these cases, such evidence is considered as proof and grounds for the valid enforcement of the remedies therein contemplated.

4.2 Are there any special rules concerning the exchange of electronic documents?

The submittal of electronic documentation with the court is admissible in accordance with the terms of the Commercial Code (Código de Comercio). However, the validity of such documents must be proven by the party that presents them.

4.3 Can any documents be withheld from the other side or from the court?

No documentation may be withheld from the other party. All documentation presented by the parties to the court must be informed and seen by the counterpart. Documents withheld from the court will not be considered or studied by the court at the time of ruling.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Any type of evidence, whether witness, expert or documentary, must be submitted by the claimant at the time of starting proceedings and by the defendant at the time he or she responds to the claims. The submission of witness evidence at the very start of the proceedings must include the names of the prospective witnesses. The questions to be asked are submitted to the court in a sealed envelope on the day of the hearing. The presentation and study of these questions will occur at the specific trial stage dedicated to their study – the *etapa probatoria*.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Witnesses do give evidence at trial. During the *etapa probatoria* stage of the trial, a witness hearing takes place. The witness must physically come forward in court and give an oral statement. Only if the witness is unable to speak or give a statement orally because of an impairment, may the witness give evidence in writing, under the court's consideration. Witnesses are usually prohibited from testifying via teleconferencing as their physical appearance in court is necessary; however, in special situations the judge may allow such an extraordinary measure.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

Witnesses may be forced to attend court for the purposes of giving evidence. Upon request of one of the parties, the judge may issue a serving order obliging a witness to come before court. If the forced witness fails to appear before the court, the judge may issue an arrest warrant on the grounds of obstruction of justice.

4. DOCUMENTARY EVIDENCE

4.1 Are the parties obliged to search for, retain or exchange documentary evidence prior to trial?

Pursuant to the provisions of the CCP, the plaintiff/defendant should, at the initial stage of the proceedings, submit the plaint/defence, along with all supporting evidence. If the plaintiff does not enclose the evidence in the plaint or if the defendant does not enclose the same in the defence, the court may disregard the statements and evidence in the proceedings (unless a party proves that he or she could not identify them in the plaint or defence due to no fault of his or her own, that taking the late statements and evidence into consideration will not delay the examination of the case, or that there are other exceptional circumstances). All factual circumstances and evidence must be revealed by the parties without delay so that the proceedings may be carried out quickly and efficiently.

If documentary evidence is lost, destroyed or taken by a third party, Article 246 of the CCP allows for testimony from witnesses or the parties. Unless documents contain a state secret, the court can order all persons to hand over documentary evidence significant to the proceedings (*Article 248, CCP*). The phrase "all persons" means a party to the proceeding, third parties supporting the claim, third-party respondents and witnesses. This phrase also refers to public administrative bodies.

The holder of the document may evade the above-mentioned obligation only if disclosing its contents would endanger him or her and/or a person close to him or her (in the scope stipulated under Article 261, § 1, CCP) with penal liability, dishonour or a major and direct financial loss. The right to evasion does not occur, however, if the holder or the third party is obligated to present the document to at least one party (for example, in case of entrusting the document for safe-keeping) or if the document is issued in the interest of the party which requests the examination of evidence (for example, the document states that an act in law was executed with the participation of said party).

The Polish law of civil procedure does not stipulate sanctions for the destruction of documents. Nonetheless, pursuant to Article 276 of the Polish Penal Code, anyone who destroys, damages, renders useless, conceals or deletes a document with regard to which he or she has no exclusive rights of disposal is subject to a fine, a non-custodial sentence or imprisonment for up to two years.

4.2 Are there any special rules concerning the exchange of electronic documents?

The CCP does not contain any regulation concerning electronic documents. The CC only considers electronic documents with secure electronic signatures equal to written documents.

4.3 Can any documents be withheld from the other side or from the court?

The proxy, including in-house lawyers, is bound by attorney–client privilege with regard to any and all information obtained by and disclosed to him or her with regard to the proceedings regardless of the form of such information or the form in which such information is held.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Before the trial, parties do not exchange evidence in the form of testimony from witnesses. The parties are only obligated to identify the witnesses (who may need to be summoned to court) and clearly indicate in pleadings the facts that will be confirmed by testimony.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

A witness is obliged to appear at the hearing upon a court summons. The sequence of the hearing is established by the chairman of the adjudicating panel. When testifying, a witness is obliged to answer the questions posed by the court and parties. A witness may refuse to answer only if his or her testimony could endanger the witness and/or people close to the witness with penal liability, dishonour or a major and direct financial loss (as stipulated under Article 261 §1, CCP), or if the testimony violates a material professional secret. For false testimony, a witness is subject to penal liability under Article 233 of the Polish Penal Code.

As the Article 235, §§ 1 and 2 of the CCP provides for, if the nature of the evidence allows, the court of trial may order that taking of evidence be conducted remotely, using technical devices. The court of trial takes evidence in the presence of the delegated court or the judicial officer in that latter court.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

The court summons the witnesses appointed by the parties to testify. The only individuals entitled to refuse to testify are the spouses, ascendants (grandparents, parents), descendants (children, grandchildren), siblings (also step-brothers and step-sisters), in-law relatives and adoptees of the parties. Means of coercion are provided for with regard to witnesses who evade appearing in court or testifying.

A witness who, despite due notification, fails to appear in court and fails to justify the absence may be subject to a fine, after which the court will summon the witness again. In the case of recurring non-appearance, the court may impose another fine or order the witness to be brought to court by force. Irrespective of any fine, a court may also order the arrest of the witness for up to a week.

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

An expert with specialist knowledge may be allowed by the court at the request of a party and *ex officio*. In Polish proceedings, parties are not entitled to appoint their own experts. The appointment of an expert by the court should be preceded by hearing the opinion of the parties as to the number of experts and their selection. However, it is assumed that the court is not bound by the applications as to the number of experts or the selecting of the expert, or by the expert's expertise – even if the applications of the parties are unanimous (*Article 278, CCP*).

2.1.2 Pre-action protocols for certain matters

For certain classes of matters brought in the State Courts – namely, non-injury motor accident cases, medical negligence claims and personal injury claims – pre-action protocols are prescribed (*see the State Courts Practice Directions (2014 edn), Appendices F, FA and FB*). These protocols, however, only govern conduct from the time a litigant files a claim in court or with the Financial Industry Dispute Resolution Centre Ltd in the case of low-value, non-injury motor accident claims. Prior to such time, parties are at liberty to correspond or negotiate with opposing parties in any manner they see fit.

The purpose of these protocols is to encourage the early exchange of information and discussions between parties. Among other things, the protocols require a potential claimant to furnish to the other party full particulars of his or her claim and the relevant supporting documents, and prescribe timelines for parties to respond or otherwise communicate with each other thereafter. Parties are required to attempt settlement negotiations and only resort to litigation if there is no prospect of resolution. Thereafter, the potential claimant is required to give ten days' notice to the other parties involved if he or she still wishes to proceed to file an action in court.

Potential litigants are required to comply with the substance and spirit of the protocol. Failure to comply with the protocols (without good reason) may result in the court issuing penalties in respect of costs.

2.2 Are there any time limits for bringing a claim? If so, what are they?

The applicable time limits for the commencement of claims in court are set out in the Limitation Act (Cap. 163). However, these time limits will only apply if specifically pleaded in defence of a claim.

Actions founded on contract or tort must be brought within six years of the date on which the cause of action accrued. Actions in respect of negligence, nuisance and breaches of duty which result in personal injury must be brought within three years of the date on which the cause of action accrued or the date on which the claimant had knowledge of the injury.

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

In Singapore, proceedings are commenced either by a writ of summons or by an originating summons (*see Order 5, Singapore Rules of Court (ROC)*). Proceedings in which a substantial dispute of fact is likely to arise must be begun by writ. All other actions which are brought must be begun by an originating summons.

The writ of summons and originating summons must be prepared in accordance with the forms prescribed in the ROC and must comply with Part III of the Supreme Court Practice Directions.

These originating processes must be filed in court, wherein they will be affixed with the court seal and whereupon the originating process will be deemed to have been commenced (*Order 6, rule 3 and Order 7, rule 4, ROC*). These processes must then be served personally on the other parties to the action (that is, by a process server of the court or a solicitor's clerk leaving a sealed copy of the originating process with the other parties) or by a manner agreed upon between the parties. A potential defendant may choose to instruct his or her solicitors to accept service of process on his or her behalf.

The plaintiff must apply to court if he or she wishes to employ other methods of service, such as service outside of the jurisdiction or substituted service.

Writ action

The writ of summons must contain a brief statement of claim, the amount claimed (if a debt or a liquidated demand), the plaintiff's particulars and also an identification of the respective capacities in which the parties involved are suing or being sued. Where possible, the writ of summons should be endorsed with the plaintiff's statement of claim. Full particulars of the requirements are set out in Order 6 of the ROC.

The writ must be served within six months of issuance, unless otherwise extended by the court.

If no statement of claim is served with the writ, the statement of claim must be filed and served within 14 days of the defendant entering an appearance in the matter (*Order 18, rule 1, ROC*). Failure to serve the statement of claim may result in the court's dismissal of the action (*Order 19, rule 1, ROC*).

Action begun by an originating summons

The originating summons must include either a statement of the questions on which the plaintiff seeks the determination of the court, or a concise statement of the relief claimed with sufficient particulars of the relevant cause of action. The originating summons must also state whether is it being brought *inter partes* or *ex parte*. Full particulars of the requirements are set out in Order 7 of the ROC.

The originating summons must be served within six months of issuance, unless extended by the court. If it is *ex parte*, the originating summons must be served with a supporting affidavit; if it is *inter partes*, the supporting affidavit may be filed and served within seven days of the date that the originating summons is filed (*Order 28, rule 3, ROC*).

The court may, of its own motion or upon the application of a party to a matter, order that an action begun by an originating summons continue as if begun by writ (*Order 28, rule 8, ROC*).

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

Defendant's response

Writ action

Within eight days of service of a writ served within the jurisdiction or within 21 days of service of a writ served out of jurisdiction, the defendant must enter an appearance in court by filing a memorandum of appearance (*Order 12, ROC*).

The defendant has to file his or her defence either 14 days from the date he or she enters an appearance or 14 days from the date on which he or she is served with the plaintiff's statement of claim, whichever is later (*Order 18, ROC*).

If the defendant fails to perform any of these actions, judgment in default may be entered against him or her (*Orders 13 and 19, ROC*).