DISPUTE RESOLUTION

Cayman Islands

LEXOLOGY
Getting The Deal Through

Consulting editor
Latham & Watkins LLP

Dispute Resolution

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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Table of contents

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LITIGATION

Court system

What is the structure of the civil court system?

The main civil court of first instance is the Grand Court of the Cayman Islands (the Grand Court), which sits full-time with between six and eight judges, recruited from the Cayman Islands and other Commonwealth jurisdictions. The Grand Court has a specialist Financial Services Division, which deals with cases concerning mutual funds, exempt insurance companies, financial services regulatory matters, applications relating to trusts, corporate and personal insolvency, enforcement of foreign judgments and arbitral awards and applications for evidence pursuant to letters of request from other jurisdictions. Grand Court cases are almost always dealt with by a judge sitting alone. Certain small civil claims worth less than CI$20,000 can be dealt with by a magistrate in the Summary Court.

Appeals from the Grand Court are heard in the Cayman Islands Court of Appeal (the Court of Appeal), which generally sits three or four times a year (and can, on payment of enhanced fees, be convened more often to deal with urgent matters). The Court of Appeal has a bench of approximately six justices of appeal, all of whom are recruited from outside the Islands and are usually sitting or retired Superior Court judges or justices of appeal from other Commonwealth nations. The Court of Appeal usually sits with a panel of three justices of appeal.

Appeal from the Court of Appeal is to the Judicial Committee of the Privy Council in London (the Privy Council).

Law stated - 10 May 2023

Judges and juries

What is the role of the judge and the jury in civil proceedings?

Proceedings are usually adversarial in nature, and the judge does not normally have an inquisitorial role. The judge will listen to the evidence and legal submission of the parties, and make a reasoned decision, which is often handed down in written form.

Judges are selected in accordance with Part V of the Constitution. Judges and magistrates are appointed by the Governor, acting on the advice of the Judicial and Legal Services Commission. Positions are advertised openly, in many Caribbean and Commonwealth jurisdictions (including the United Kingdom). The selection process takes the form of a significant application form, shortlisting and interview. There are no specific diversity initiatives, but the Constitution contains a prohibition on discrimination, and the international nature of the candidates tends to favour a diverse bench in any event.

Section 21 of the Judicature Act provides that a party may apply for the case to be tried by a jury (of seven), but this course of action is exceptional. Juries are selected from registered electors and must be under the age of 70. Sections 8 to 21 of the Judicature Act set out a comprehensive process for the selection of jurors. Attorneys who are actively engaged in litigation practice are among those persons exempt from jury service.

Law stated - 10 May 2023

Limitation issues

What are the time limits for bringing civil claims?

The Limitation Act provides that the time limit for bringing civil claims in tort (apart from defamation and personal injuries) and contract is six years from the date of accrual of the cause of action. Claims brought in equity (such as

claims for breaches of fiduciary duty) will usually be subject to a six-year period by analogy. Claims brought in relation to documents under seal have a 12-year limitation period. The time limits may be extended in cases of fraud or deliberate concealment of the facts giving rise to a claim.

It is possible for parties to enter into 'standstill' agreements, to suspend the running of time, and a party may elect not to take advantage of a limitation defence if it wishes.

Law stated - 10 May 2023

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no formal or mandatory pre-action steps that must be undertaken prior to the issue of proceedings. Although a party's pre-action conduct might be a factor that the court takes into account at the conclusion of the proceedings in the exercise of its discretion when making costs orders. Parties may bind themselves by contract to seek to resolve disputes by mediation or other forms of alternative dispute resolution before issuing proceedings if they choose to do so.

There is only very limited scope for compelling pre-action discovery. In rare cases, usually where a complainant knows that a wrong has been committed against him or her but is unaware of the precise identity of the wrongdoer, and a third party, through no fault of his or her own, has become embroiled in the tortious act, the court may order the third party to disclose information concerning the tort and the wrongdoer by making a Norwich Pharmacal order, following a line of cases first developed in England. Anton Piller (or search) orders are also available in appropriate cases.

Law stated - 10 May 2023

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Most civil claims are commenced by the issue of a writ by the plaintiff, with certain actions being started by originating summons (in cases where the facts of the matter are unlikely to be in dispute, or where that procedure is required by legislation). Insolvency proceedings are begun by petition. It is the plaintiff's (or petitioner's) responsibility to serve the other parties with the originating process once it has been issued by the court office. Originating documents are generally valid for four months from the date of issue (or six months, where the document is required to be served abroad and permission is granted by the court to do so). The originating process must generally be served personally by delivery to the hands of the individual. The originating process may be served on a Cayman Islands company by delivery to its registered office in the Cayman Islands. If a party cannot be found, the plaintiff may apply to the court for permission to serve the document by an alternative method, for example, by advertisement in a local newspaper.

The courts generally have capacity to handle their caseload, and 'acting' judges can be and often are appointed on a temporary basis by the Governor to ensure that sufficient judges are available. The most pressing issue concerning the capacity of the courts is a lack of sufficient and adequate courtrooms. It is acknowledged by the government that additional modern court facilities are required and a building has been acquired for that purpose, but it is not yet clear when those facilities will be ready and available for use.

Law stated - 10 May 2023

Timetable

What is the typical procedure and timetable for a civil claim?

In an action commenced by writ, the plaintiff must prepare a 'statement of claim' setting out the facts upon which his or her cause of action is based. This statement of claim may either be endorsed on the writ or presented as a separate document (known as a 'pleading'). If the statement of claim is not endorsed on the writ, the writ must contain a short statement giving sufficient information to the defendants to identify what the action is about (known as a general endorsement). Once the writ is served, the defendants have 14 days (or longer if the writ is served abroad) to file an acknowledgement of service with the court office. Once that is done, if the statement of claim was served with the writ, the defendant has 14 days (or such other period as the parties agree or the court directs) to file and serve a defence, which may also include a counterclaim. The plaintiff has a period of time (again, 14 days or such other period as the parties agree or the court directs) to file and serve a reply and defence to counterclaim if necessary. At this point, the pleadings are deemed to be closed and the plaintiff must file a summons for directions with the court within one month. The summons for directions is the parties' opportunity to formulate a timetable for the remainder of the action. They may either agree or seek directions for discovery of documents, oral discovery and interrogatories (if any), exchange of witness statements and experts' reports (if required) and a pretrial timetable for the preparation of trial documents, legal submissions and other matters. Simple cases can be completed in this way in a fairly short timescale (say, six to nine months), but complex matters, particularly if they are multiparty and multi-jurisdictional, can take much longer.

Matters begun by originating summons and by petition are usually dealt with on the basis of affidavit rather than oral evidence, and can often be completed more quickly. A key factor in the length of time it takes to complete a case is the availability of court time, which can be limited.

Law stated - 10 May 2023

Case management

Can the parties control the procedure and the timetable?

To a large extent, they can. The parties will often agree the case management timetable without the need for a hearing on the summons for directions and can agree to vary the timetable by consent while it is running its course. In the event of non-compliance with a timetable, the parties can apply to the court for orders imposing sanctions ('unless' orders) in the event of further non-compliance.

Law stated - 10 May 2023

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Preservation and discovery of relevant documents form an important part of the litigation process. An attorney has a personal obligation as an officer of the court to ensure that his or her client complies with his or her obligations concerning discovery, including the obligation to disclose all relevant documents as opposed to just those that help the client's case or harm their opponent.

Law stated - 10 May 2023

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Several categories of documents attract privilege, including legal advice privilege (legal advice that would be privileged whether or not litigation was in train), litigation privilege (which protects documents generated as a result of contemplated or pending litigation), without prejudice (which is a form of privilege preventing production of communications aimed at settling disputes) and the privilege against self-incrimination. Legal advice (as opposed to other more general advice) given by in-house counsel will be protected by legal professional privilege provided that the circulation group is sufficiently contained so that the dissemination of the advice within an organisation cannot be construed as a waiver of that privilege.

Documents that are confidential and fall within the scope of the Confidential Information (Disclosure) Act 2016 may not be disclosed without the permission of the party to whom the confidence attaches, unless the court orders otherwise.

Law stated - 10 May 2023

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

Generally speaking, yes. It is usual at the summons for directions stage for the parties to agree, or the court to order, that statements of witnesses of fact be mutually exchanged on a certain date after time for consideration of documents and information obtained by discovery. Thereafter, a timetable will be set for the exchange of experts' reports, which can either be simultaneous or sequential, depending on the nature of the case; for without prejudice meetings of experts to take place to attempt to narrow the issues in dispute; and for the composition of a joint statement of experts of like discipline to set out areas on which they are agreed and on which they disagree, and if they disagree, the reasons why. It is then often agreed or directed that the experts may serve supplemental experts' reports dealing with matters that have arisen during the course of their discussions.

Law stated - 10 May 2023

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The principal method for giving evidence at trial, whether factual or expert, is orally in person. Facilities can be made available for overseas witnesses to give their evidence remotely via a video connection. Each witness will give his or her evidence-in-chief (usually by confirmation that the matters set out in his or her written, signed statement or report are true to the best of his or her information and belief, making any corrections or clarifications and usually being asked a few questions by his or her own counsel). The witness will be cross-examined by opposing counsel, before being asked questions by his or her party's counsel in re-examination, where questions are limited to clarifying or correcting matters that have arisen in cross-examination.

Law stated - 10 May 2023

Interim remedies

What interim remedies are available?

A broad range of interim remedies is available, including freezing injunctions, Norwich Pharmacal (disclosure) orders and orders for interim payments. As a result of a series of cases in 2015, the Grand Court Act and Grand Court Rules were amended to provide that the court may now grant interim relief in the absence of substantive proceedings in the Cayman Islands (free-standing relief), to make it easier for the court to grant interim relief in support of foreign proceedings.

The Grand Court Rules also permit a number of other interim remedies, such as applications for default and summary judgment, and applications to strike out proceedings or pleadings on various grounds.

In corporate insolvency proceedings, liquidators may be appointed on a provisional basis, either for the purpose of promoting a restructuring (and avoiding an official liquidation) or to protect assets or prevent mismanagement pending the hearing of the winding-up petition.

Law stated - 10 May 2023

Remedies

What substantive remedies are available?

Apart from damages, the court has jurisdiction to grant a number of other remedies, including permanent injunctions, declarations, accounts and enquiries and restitutionary remedies. Aggravated and exemplary damages are available but rarely awarded. Interest is payable on damages either pursuant to contractual arrangements (if any) or at a statutory rate (which is varied from time to time) pursuant to the Judicature Act.

Corporate insolvency procedures may lead to winding-up orders, or a range of alternative orders pursuant to section 95(3) of the Companies Act, if grounds for winding up are established, but the court is of the view that another remedy, such as the purchase of the petitioner's shares, is more appropriate.

Law stated - 10 May 2023

Enforcement

What means of enforcement are available?

Enforcement of money judgments within the jurisdiction can be undertaken by way of execution against goods (a writ of fieri facias), garnishee proceedings (to capture sums owed by third parties to the judgment debtor), charging orders over real estate or other property, such as shares in Cayman Islands companies (which lead to orders for the sale of the property), the appointment of a receiver, sequestration or attachment of earnings. Disobedience of a court order such as an injunction can lead to committal to prison. Winding-up or bankruptcy proceedings can also be started using a judgment debt (and on other grounds).

Law stated - 10 May 2023

Public access

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

Trials of writ actions and final hearings of petitions and originating summonses (ie, most cases) are held in open court and are accessible by the public. When a trial or hearing takes place by video conference, which has become common since the covid-19 pandemic, the hearing is played live in a courtroom. Other hearings, including most applications for directions, interim relief and case management, are held in chambers, but members of the public may apply to the court for permission to attend, or can attend by agreement of the parties.

Writs and other originating process and judgments are open to inspection by the public. Other court documents are not generally available to members of the public, but those interested can apply to the court for permission to inspect the court files. The clerk of the court may determine those applications administratively unless he or she considers that the matter should be referred to a judge. The applicant must provide a concise statement of the reason for the request to inspect. In winding-up proceedings, the court file is open to specified categories of persons (including admitted creditors and shareholders), but not to the public.

Law stated - 10 May 2023

Costs

Does the court have power to order costs?

The court has power to order costs, and has very wide discretion in so doing, although the presumption is that the losing party will pay the successful party's costs. Unless the amount of costs is agreed between the parties, the costs are referred to the clerk of the court, or his or her nominee, for assessment by way of taxation, pursuant to Order 62 of the Grand Court Rules and the Court Costs Rules and Practice Directions.

Costs are payable either on the standard basis (the successful party bearing the burden of showing that its costs were reasonable), or on the indemnity basis if the court is satisfied that the paying party has conducted the proceedings (or that part of them to which the costs order relates) improperly, unreasonably or negligently. If indemnity costs are awarded, the burden of proof shifts to the paying party to establish that the costs were unreasonable. If standard costs are awarded, the Court Costs Rules provides upper limits for the hourly rates of attorneys based on seniority, and for certain disbursements. Rules exist to prevent the duplication of effort by attorneys if overseas attorneys (usually Queen's Counsel) are retained. Brief fees and refreshers (barrister's per diem rates) are not recoverable, and barristers' time must be accounted for in time units.

The court has power to order a claimant to provide security for costs on application by the defendant and frequently does so, although awards for security for costs against foreign plaintiffs are generally limited to a relatively nominal sum equivalent to the cost of registering a costs order in a foreign jurisdiction for enforcement. It also has power to order a defendant to provide security for the costs of a counterclaim. Interim costs orders have become frequent since their introduction to the Grand Court Rules.

The current costs regime was introduced in 2002 and has been amended (albeit not significantly) from time to time.

Law stated - 10 May 2023

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

The rules in relation to litigation funding arrangements in the Cayman Islands have been revolutionised by the passing of the Private Funding of Legal Services Act, 2020 (the Act) and Private Funding of Legal Services Regulations (2021) (the Regulations). Part 4 of the Act repeals any offence or tort under the common law for maintenance or champerty. The Act also allows for litigation funding and conditional fee agreements to be entered into without court approval and, importantly, permits contingency fee arrangements for the first time. The previous common law rules, which we described in previous editions of this guide, no longer apply.

The Act governs contingency fee arrangements (CFAs) (the definition of which includes conditional fee agreements) and litigation funding agreements (LFAs). The Act defines the 'proceedings' to which it applies broadly as including those before any court or comparable tribunal or functionary, and includes arbitration proceedings.

A CFA is an agreement providing for some or all of an attorney's fees to be payable at the conclusion of the case only if the relevant litigation is successful, typically providing for a 'success fee' payable to the attorney.

Part 2 of the Act confirms that an attorney may enter into a CFA with a client under which the attorney's remuneration is contingent (in whole or in part) on the successful disposition or completion of the matter. Section 4 records that restrictions are imposed by the Regulations on the percentage of any recoveries or property in which an attorney may participate (being 33 per cent of the total amount awarded or value). However, under section 4(4), an attorney and client may jointly apply for a court sanction to approve a CFA that contravenes these restrictions. The court may consider any relevant factors, but must have regard to the nature and complexity of the proceeding and the expense and risk involved in the proceeding, and in any event cannot approve a CFA under which the attorney would receive more than 40 per cent of the total award or proceeds recovered.

An LFA is defined in subsection 16(1) of the Act as an agreement under which a funder agrees to fund in whole or in part the provision of legal services to a client by an attorney under which the client agrees to pay a sum to the funder in specified circumstances.

Subsection 16(2) requires that an LFA be in writing; that it complies with any prescribed requirements in the Regulations; and that the sum to be paid by a client (upon success) shall include either any costs payable to the client in relation to the relevant proceedings, and an amount calculated by reference to the funder's anticipated expenditure, or a percentage of the recoveries or property.

These are significant and welcome changes that are likely to impact the litigation landscape in the Cayman Islands for many years to come. Anecdotal evidence suggests that CFAs have not yet come into widespread use and only a small number of firms are so far willing to offer them.

Law stated - 10 May 2023

Insurance

Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance, whether before or after the event, is permissible and is gradually becoming more and more common.

Law stated - 10 May 2023

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The Cayman Islands do not have a form of 'class action' as the term is understood in the United States. However, it is

possible for parties with the same interest in proceedings to bring 'representative proceedings', in which one person acts as the plaintiff on behalf of the group. Defendants can also be sued in a representative capacity. Use of this procedure in the Cayman Islands has, historically, been rare in ordinary litigation, although it is adopted more regularly in insolvency proceedings.

Law stated - 10 May 2023

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties have an appeal from a 'final' order (eg, a judgment following a trial) as of right. Appeals from interlocutory or interim orders are possible with the permission of the court, which must initially be sought from the first instance Grand Court judge at the hearing of the application in question, or by way of summons within 14 days of the decision appealed against. The applicant must show that there are arguable grounds for appeal, whether as a result of an error of law or fact, or mixed fact and law.

If the Grand Court judge refuses permission, a written, and then an oral, application may be made to the Court of Appeal.

The Court of Appeal Rules were significantly improved and updated in 2014, particularly with regard to the procedures for obtaining leave to appeal. Leave must be obtained to appeal from the Court of Appeal to the Privy Council, either confirming the appellant's right to appeal or granting special leave. In a number of recent cases, the Court of Appeal has denied special leave to appellants who must then apply separately to the Privy Council for special leave, which is only granted where there is an arguable point of law of general public importance.

The Privy Council has issued a series of detailed amended Practice Directions governing its procedures, and these are available on its website.

Law stated - 10 May 2023

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments are currently enforced at common law by the issue of a writ based upon the unpaid foreign judgment debt. These proceedings must be initiated in the Financial Services Division.

These judgments are generally enforceable where they are rendered by a court of competent jurisdiction, final and conclusive, and of a nature that the principles of comity require the domestic court to enforce.

The Law Reform Commission has suggested various amendments to the largely redundant Foreign Judgment Reciprocal Enforcement Act (which only applies to certain courts of Australia) to place matters on a solid statutory footing and make reciprocal recognition of foreign judgments more easily available. These have not yet found favour with the legal and financial services community, and a bill put forward in 2014 to legislate for these changes has not yet been enacted.

Law stated - 10 May 2023

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Apart from the interim orders referred to above, and subject always to the provisions of the Confidential Information (Disclosure) Act also referred to, the Grand Court will supervise formal letters of request from foreign courts and will also conduct depositions pursuant to letters of request in some circumstances pursuant to the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 (SI 1978/1890), which extended to the Cayman Islands the provisions of the UK Evidence (Proceedings in Other Jurisdictions) Act 1975.

Law stated - 10 May 2023

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Act 2012 is based on the UNCITRAL Model Law.

Law stated - 10 May 2023

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

Generally speaking, an enforceable agreement must be in writing and signed by the parties, or contained in a series of communications that provide a record of the agreement. Arbitration agreements can also arise if pleaded in a court document and not denied by the opposing party. Further, if parties agree orally by reference to terms that are in writing and that incorporate an arbitration clause, the arbitration clause is deemed to be an agreement in writing.

Law stated - 10 May 2023

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the contract is silent as to the appointment of an arbitrator, the parties are free to agree the identity and number of arbitrators. If they cannot do so, the Arbitration Act provides for a default position of a single arbitrator. If the parties are unable to agree on the identity of an arbitrator or arbitrators, the Arbitration Act provides for the 'appointing authority' (currently the Grand Court) to appoint the arbitrators on application and with regard to a number of factors. These include the subject matter of the dispute, the availability of the arbitrator, the identity of the parties, any suggestions made by the parties, any qualifications requested by the agreement of the parties and any other factor likely to secure the appointment of an independent and impartial arbitrator.

Sections 18 to 20 of the Arbitration Act provide a mechanism to challenge the appointment of an arbitrator on grounds of lack of impartiality, independence or agreed qualifications, ill health, failure or refusal to conduct the proceedings or

delay. The application is made to the tribunal in the first instance, and then to the Grand Court, Financial Services Division. There is no appeal from an order of the Grand Court in this instance.

Law stated - 10 May 2023

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

The parties are free to choose their arbitrators, and in default, the court may do so. The parties are not limited to arbitrators who are based in the Cayman Islands, and may choose from the wide pool of arbitrators available internationally. However, there are a number of qualified and experienced arbitrators available in the Cayman Islands, most of whom are members of the Cayman Islands Association of Arbitrators and Mediators, or the Cayman Islands' chapter of the Chartered Institute of Arbitrators. The pool of arbitrators available is therefore wide and would meet the needs of complex arbitration.

Consistent with the shift towards the greater use of arbitration, the Cayman International Arbitration Centre is expected to open its doors in the near future, providing world-class specialist hearing facilities, its own arbitration rules and case administration services.

Law stated - 10 May 2023

Arbitral procedure

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

The Arbitration Act provides in general terms that the tribunal shall act fairly and impartially, allow each party a reasonable opportunity to present their case, conduct the arbitration without unnecessary delay and conduct the arbitration without incurring unnecessary expense. It also provides for majority decisions in tribunals with more than one member if the parties so agree. Other than those general guidelines, the parties are largely free to agree the procedure and rules of evidence and law to be adopted by the tribunal. If they do not agree, the Arbitration Act contains a series of default procedures and powers that the tribunal must adopt.

Law stated - 10 May 2023

Court intervention

On what grounds can the court intervene during an arbitration?

Apart from the provisions concerning the appointment and removal of the tribunal, the court has a number of powers in relation to the conduct of an arbitration, including to:

- stay legal proceedings brought in contravention of an arbitration agreement;
- order that interpleader proceedings be determined in accordance with any relevant arbitration agreement;
- extend time for commencing arbitration proceedings if limits imposed by the contract would cause undue hardship;
- review a tribunal's positive finding as to its own jurisdiction;
- enforce a tribunal's orders and directions, including security for costs and interim relief;
- issue a subpoena to compel a witness to attend at arbitration and to compel that person to attend before the court for examination if he or she fails to comply or produce documents;
- order security for the amount in dispute;

- grant interim relief, including for prevention of dissipation of assets (or grant any other interim injunction or interim measure);
- enforce interim measures granted by the tribunal;
- extend the time for making an award;
- enforce consent awards;
- assess (tax) the costs of the arbitrator in certain circumstances;
- make awards of costs if arbitration proceedings are aborted and make provision for the costs of the arbitration so that an award may be released;
- order property recovered as a result of the arbitration to stand as security for legal fees;
- determine any substantial question of law in the course of the proceedings;
- enforce the award as if it were a judgment of the court; and
- set aside the award if a New York Convention ground is made out.

Many of these powers can be excluded by agreement of the parties.

Law stated - 10 May 2023

Interim relief

Do arbitrators have powers to grant interim relief?

Unless the parties agree otherwise, the tribunal has power, by section 44 of the Arbitration Act, to:

- grant interim relief to maintain or restore the original position of a party pending determination of the dispute;
- take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
- provide a means of preserving assets out of which a subsequent award may be satisfied; or
- preserve evidence that may be relevant and material to the resolution of the dispute.

Law stated - 10 May 2023

Award

When and in what form must the award be delivered?

Unless otherwise agreed by the parties, the tribunal may make more than one award at different points in time during the proceedings. If it makes multiple awards, the tribunal must specify in the award the issue, claim or part of a claim that is the subject matter of a particular award.

Awards are required to be in writing and signed – in the case of a sole arbitrator, by the arbitrator him or herself or, in the case of two or more arbitrators, by all the arbitrators or the majority of the arbitrators if the reason for any omitted signature is stated. The award must give reasons for the decision, unless the parties have agreed that reasons are not necessary or the award is an award on agreed terms. The date of the award and the seat of the arbitration must be stated in the award and the award will be deemed to have been made at the place of the arbitration.

After the award is made, a copy of the award signed by the arbitrators must be delivered to each party. At the request of any party to an arbitration agreement, the appointing authority may certify an original award registered with it, certify a copy of any relevant original arbitration agreement or arrange for the translation and sworn certification of any award or agreement not stated in the English language.

Law stated - 10 May 2023

Appeal

On what grounds can an award be appealed to the court?

The parties may contract out of the right to appeal if they wish, but if they do not, a party may, with the permission of the Grand Court, appeal to the Grand Court on a question of law arising out of an award. The Arbitration Act sets out a number of factors to be considered by the court when granting permission to appeal, and the Grand Court may not grant permission unless it is satisfied that:

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

The order made on such an application is appealable only with further leave of the Grand Court or with leave of the Court of Appeal, but the Court of Appeal may only grant leave if it is satisfied that the point of law concerned is one of general importance, or that there is some other special reason that it should be considered by the Court of Appeal. Final appeal rests with the Privy Council.

Law stated - 10 May 2023

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

A domestic award made by an arbitral tribunal pursuant to an arbitration agreement may, with leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect. Where leave is given, judgment may be entered in terms of the award. Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the arbitral tribunal lacked jurisdiction to make the award. In relation to foreign arbitral awards, the provisions of the Foreign Arbitral Awards Enforcement Act 1997 enact the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards into Cayman Islands law. An action on the award may also be commenced by writ. There have been no recent changes in enforcement procedures.

Law stated - 10 May 2023

Costs

Can a successful party recover its costs?

Unless a contrary intention is expressed, every arbitration agreement shall be deemed to include a provision that the costs of the arbitration shall be at the discretion of the arbitral tribunal. The tribunal would usually follow the same principles as to the award of costs as applied by a judge.

The parties are free to agree the costs that might be recovered. In the absence of agreement, the losing party will normally be ordered to pay the successful party' legal costs and disbursements (taxed by the arbitrator if necessary)

and the costs and expenses of the tribunal. There has been no decision in the Cayman Islands concerning the recovery of third-party funding costs incurred as a result of arbitration. However, it is possible that the court would follow the decision of the English Commercial Court in Essar Oil Fields Services Limited v Norscot Rig Management PVT Limited [2016] EWHC 2361 (Comm), in which the judge held that the words 'other costs' in section 59(1)(c) of the Arbitration Act 1996 were broad enough to encompass third-party funding costs. While we would expect the court to be sympathetic to parties seeking to claim these costs, the Arbitration Act 2012 does not include a provision similar to the English provision, and accordingly, it is by no means a foregone conclusion that they could be recovered without the agreement of the parties.

Law stated - 10 May 2023

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative dispute resolution (ADR) is a relatively new concept in the Cayman Islands and is taking some time to reach critical mass. There is a Cayman Islands Association of Mediators and Arbitrators, which is willing to act as an appointing body, but the number of appointments to date has been quite small. A mediation scheme for family cases has been developed by the Judicial Administration. A small number of commercial mediations take place, but they are by nature confidential, and it is difficult to obtain firm information on numbers.

Law stated - 10 May 2023

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is currently no mandatory requirement to attempt ADR prior to or during litigation or arbitration and no power to compel parties to attempt it. Parties may bind themselves by contract to do so if they wish. If requested by all parties, the court or tribunal may stay the proceedings for ADR to be attempted. The Grand Court has introduced practice directions for the use of judicial mediation although the authors are not aware of judicial mediation having been employed to date.

Law stated - 10 May 2023

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The Grand Court Rules are based upon the Rules of the Supreme Court of England and Wales 1999, modified accordingly. There has been no attempt at a wholesale reform of court procedures as happened in England and Wales with the adoption of the Civil Procedure Rules.

Law stated - 10 May 2023

UPDATE AND TRENDS

Recent developments and future reforms

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Recent changes to the Cayman Islands' restructuring regime for companies, which came into force on 31 August 2022, introduced rules allowing for the appointment of a dedicated 'restructuring officer'. This replaces the provisional liquidation regime (which had previously been used where a company was pursuing restructuring) and resolves some of its difficulties – simplifying the process, reducing cost and promoting certainty of outcome.

Sir Anthony Smellie KC recently stepped down as Chief Justice of the Cayman islands after 25 years in the role. He was replaced by Chief Justice Margaret Ramsay-Hale.

Law stated - 10 May 2023

Jurisdictions

Armenia	Concern Dialog Law Firm
Australia	Kalus Kenny Intelex
Austria	OBLIN Attorneys at Law
Bahrain	Newton Legal Group
Belgium	White & Case
Bulgaria	Georgiev Todorov & Co
Cayman Islands	Campbells
China	BUREN NV
Cyprus	AG Erotocritou LLC
Denmark	Lund Elmer Sandager
Egypt	Soliman, Hashish & Partners
Germany	Martens Rechtsanwälte
Greece	Bernitsas Law
Hong Kong	Hill Dickinson
India	Cyril Amarchand Mangaldas
Indonesia	SSEK Law Firm
Israel	Lipa Meir & Co
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Niedermüller Rechtsanwälte | Attorneys at Law
Malaysia	Shearn Delamore & Co
Monaco	Donald Manasse Law Offices
Panama	Patton Moreno & Asvat
Philippines	Ocampo, Manalo, Valdez & Lim Law Firm
Romania	Zamfirescu Racoți Vasile & Partners
Serbia	Stankovic & Partners NSTLaw

South Korea	JIPYONG LLC
Spain	Ontier
Sweden	TIME DANOWSKY Advokatbyrå AB
Thailand	Pisut & Partners
United Arab Emirates	Kennedys Law LLP
United Kingdom - England & Wales	Latham & Watkins LLP
USA - California	Ervin Cohen & Jessup LLP
USA - New York	Dewey Pegno & Kramarsky LLP