“How does litigation work in ...?”

A country-by-country report

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contents

Introduction

Clients regularly ask us questions concerning litigation procedures and processes in their respective jurisdictions and beyond. We have taken a selection of those commonly asked questions and compiled the responses into this practical guide for in-house litigation counsel. The guide provides a country-by-country overview of litigation in Asia-Pacific, Continental Europe, the Middle East, United Kingdom and United States of America.

We hope you find the guide useful for you and your team. If you would like to hear more on any topic or country, please reach out to one of us or any of your usual contacts.

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This information is correct as of January 2015.

Frequently Asked Questions

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Asia Pacific

Australia, Hong Kong, Singapore*

	Australia	Hong Kong	Singapore
1. How long is the limitation (prescription) period?	The standard limitation period is six years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract; in most torts, a cause of action accrues when damage is suffered. There are exceptional limitation periods for certain causes of action. For example, if the claim is on a deed or for the recovery of land, the limitation period is 12 years, while the period for personal injury claims is three years. Where an action is based on fraud or a mistake, the limitation period does not start to run until the fraud or mistake was discovered or could with reasonable diligence have been discovered. In limited circumstances, limitation periods may be extended by a Court.	The standard limitation period is six years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract; in most torts, a cause of action accrues when damage is suffered. There are exceptional limitation periods for certain causes of action. For example, if the claim is on a deed or for the recovery of land, the limitation period is 12 years, while the period for personal injury claims is three years (though this can be extended). Where an action is based on fraud or a mistake, the limitation period does not start to run until the fraud or mistake was discovered or could with reasonable diligence have been discovered.	The standard limitation period is six years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract; in most torts, a cause of action accrues when damage is suffered. There are exceptional limitation periods for certain causes of action. For example, if the claim is on a deed or for the recovery of land, the limitation period is 12 years, while the period for personal injury claims is three years (though this can be extended). Where an action is based on fraud or a mistake, the limitation period does not start to run until the fraud or mistake was discovered or could with reasonable diligence have been discovered.
2. Can I toll the limitation period?	Yes. Parties can agree to stop time running for limitation purposes if they wish.	Yes. Parties can agree to stop time running for limitation purposes if they wish. The time limit is also automatically extended if parties to a cross-border dispute are conducting a mediation when the limitation period would otherwise have ended.	Yes. Parties can agree to stop time running for limitation purposes if they wish.

	Australia	Hong Kong	Singapore
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Avoiding the routine or other destruction of documents can be particularly important with electronic documents. Steps need to be taken to ensure that, e.g. relevant e-mails are not deleted periodically under standard procedures aimed at saving storage space. Similarly, anyone who may have relevant documents on the hard drive of a computer or text messages on a mobile phone should not delete those documents. This may entail both speaking to those likely to have relevant documents and also checking IT architecture to see where, when and how documents are stored.	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Avoiding the routine or other destruction of documents can be particularly important with electronic documents. Steps need to be taken to ensure that, e.g. relevant e-mails are not deleted periodically under standard procedures aimed at saving storage space. Similarly, anyone who may have relevant documents on the hard drive of a computer or text messages on a mobile phone should not delete those documents. This may entail both speaking to those likely to have relevant documents and also checking IT architecture to see where, when and how documents are stored.	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, the Court may draw an adverse inference. It could also lead to a case being dismissed. Avoiding the routine or other destruction of documents can be particularly important with electronic documents. Steps need to be taken to ensure that, e.g. relevant e-mails are not deleted periodically under standard procedures aimed at saving storage space. Similarly, anyone who may have relevant documents on the hard drive of a computer or text messages on a mobile phone should not delete those documents. This may entail both speaking to those likely to have relevant documents and also checking IT architecture to see where, when and how documents are stored.

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	An Australian Court will be seised of a matter where it has jurisdiction to hear the matter and decides in its discretion to exercise that jurisdiction. Jurisdiction is established by service of process on a defendant. A plaintiff seeking to serve process on a defendant who is outside Australia will be required to establish that the claim against the prospective defendant falls within the cases in which service out of Australia is permitted by the rules of the Court. It is open to a defendant to proceedings on foot in an Australian Court to apply for a stay of those proceedings on the grounds that litigation is pending in another jurisdiction and the existence of the parallel proceedings makes Australia a clearly inappropriate forum because it would be vexatious or oppressive to allow the Australian proceedings to go ahead. Where an Australian Court finds that it is a clearly inappropriate forum, it will decline to exercise its jurisdiction to hear the matter and order that the proceedings be stayed. While it does not necessarily follow that the Australian action will be stayed if it was begun after the foreign one, the order in which the proceedings are brought is a significant factor, with the result that a stay is likely to be granted if the foreign proceedings were instituted first.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court can be important. A Hong Kong Court is seised of a claim when the writ has been filed in the Court and is then issued. Hong Kong Courts can proceed with a case even though there are already ongoing proceedings in a Court or Courts outside Hong Kong. However, the fact that there are other offshore proceedings may be a factor that the Hong Kong Court will take into account in exercising its discretion as to whether to go ahead and hear the proceedings that have been issued in Hong Kong. Substantive proceedings in a Court in Mainland China are treated as foreign law proceedings for Hong Kong conflict of laws purposes.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. Generally, where there is a pending suit in another jurisdiction, the Singapore Courts would be reluctant to allow parallel proceedings to proceed in Singapore. The Singapore Courts may grant an anti-suit injunction to restrain proceedings taken in a Court outside Singapore. This may happen if, e.g. proceedings have been brought in breach of an exclusive jurisdiction clause.

	Australia	Hong Kong	Singapore
4. Is it important for the Court to be first seised and, if so, when is the Court seised? (continued)	Under Australian law, it has been held not to be vexatious or oppressive in the relevant sense to institute proceedings in Australia with the motive of persuading the other party not to commence litigation in another country.		
5. Are there any steps I need to take before commencing proceedings?	In the state Supreme Courts, there are ordinarily no steps that a party is required to take before commencing proceedings. However, there is a general expectation that litigation is a last resort and that the parties will have conferred prior to having recourse to the Courts. In the Federal Court, however, an applicant is required to file a "genuine steps statement" with any originating process that outlines the steps that have been taken to attempt to resolve the dispute prior to commencing proceedings or, if no steps were taken, the reasons why (e.g. where the matter is urgent).	Normally, no steps have to be taken before commencing Court proceedings. The only pre-action protocol in Hong Kong applies in respect of personal injury cases. However, there is a general expectation that litigation is a last resort and parties are encouraged to seek to resolve their dispute by means of alternative dispute resolution, in particular mediation. Even once litigation has commenced, the Court will encourage the parties to mediate and parties are required to state whether or not they are prepared to mediate and set out the reasons for not wanting to mediate (if that is the case). A Court may also stay litigation for such period and on such terms as it thinks fit to enable mediation to take place.	Normally, no steps have to be taken before commencing Court proceedings.
6. Is there any interim relief that might improve my position?	The principal relief that might be available is an interim or interlocutory injunction, typically to preserve the status quo pending resolution of the dispute or an order to freeze the debtor's assets for subsequent enforcement purposes.	The principal relief that might be available is an interlocutory injunction, typically to preserve the status quo pending resolution of the dispute or an order to freeze the debtor's assets for subsequent enforcement purposes.	The principal relief that might be available is an interlocutory injunction, typically to preserve the status quo pending resolution of the dispute or an order to freeze the debtor's assets for subsequent enforcement purposes.

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
6. Is there any interim relief that might improve my position? (continued)	If, e.g. you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The main questions at the interim stage will be whether there is a serious question to be tried, where the balance of convenience lies, and whether damages would ultimately prove to be an adequate remedy. More generally, a Court may make a freezing order if the claimant has a good arguable case on the merits and there is a real risk that the defendant will deal with its assets with the result that they are not available if judgment is given against it. While a freezing order may be made even if there is no evidence of a positive intention to frustrate a judgment, there is no basis for the making of a freezing order unless there is a risk or likelihood that a judgment will be frustrated. In considering whether to exercise its discretion to make a freezing order, the Court will consider the sufficiency and strength of a plaintiff's case in the context of that risk. A freezing order in relation to assets outside the jurisdiction may also be made in limited circumstances.	If, e.g. you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The main questions at the interlocutory stage will be where the balance of convenience lies, including whether damages would ultimately prove to be an adequate remedy. More generally, a Court can grant a freezing injunction if the claimant has a good arguable case on the merits and there is a real risk that the defendant will deal with its assets with the result that they are not available if judgment is given against it. This commonly requires something approaching fraud on the defendant's part; carrying out transactions in the ordinary course of business will not suffice even if the result will be to reduce assets that might be available for enforcement purposes. Freezing injunctions can be granted either in support of proceedings in Hong Kong or in support of proceedings elsewhere, but in the latter case, there must be a real connecting link between the subject matter of the measures sought and Hong Kong (e.g. the injunction must be directed to assets in Hong Kong).	If, e.g. you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The main questions at the interlocutory stage will be where the balance of convenience lies, including whether damages would ultimately prove to be an adequate remedy. More generally, a Court can grant a freezing injunction if the plaintiff has a good arguable case on the merits and there is a real risk that the defendant will deal with its assets with the result that they are not available if judgment is given against it. The Court commonly requires something approaching fraud on the part of the defendant before it would grant a freezing order.

	Australia	Hong Kong	Singapore
6. Is there any interim relief that might improve my position? (continued)	In order to secure an interim injunction or a freezing order, it is necessary to give an undertaking as to damages; i.e. to agree to pay any damages that the injunction causes to the defendant in the event that the injunction proves unjustified (usually because the claimant loses the case). This undertaking may need to be supported by a bank or similar guarantee.	In order to secure an interim injunction, it is necessary for the party so applying to give an undertaking as to damages; i.e. to agree to pay any damages that the injunction, if granted, causes to the defendant in the event that the injunction proves unjustified (usually because the claimant loses the case). This undertaking needs to be supported by a bank or similar guarantee.	In order to secure an interim injunction, it is usually necessary to give an undertaking in damages; i.e. to agree to pay any damages that the injunction causes to the defendant in the event that the injunction proves unjustified (usually because the plaintiff loses the case). This undertaking may need to be supported by a bank or similar guarantee.
7. What judges or other persons will hear my case?	At first instance, the case will be heard by a single judge and, on appeal, usually by three judges. If an applicant is granted special leave to appeal to the highest Court, the High Court, there will usually be five or seven judges hearing the case.	At first instance, the case will be heard by a single judge and, on appeal (at the Court of Appeal), usually by three judges. Thereafter, if a claimant was granted leave to appeal to the highest Court, the Court of Final Appeal, there will be five judges hearing the case. Judges in Hong Kong are all former practising lawyers.	This depends on the quantum and nature of your claim. Claims amounting to SGD250,000 or less are usually heard at first instance by a single judge in the State Courts, and claims amounting to more than SGD250,000 are heard at first instance by a single judge in the High Court. If the nature of the case in the High Court is of an international character, the parties may be asked to transfer the case to the Singapore International Commercial Court which is a division of the High Court. In case of such transfer, the case is heard by a single judge or three judges, one or more of which may include international judges. Appeals from the State Courts are heard by a single judge in the High Court, whereas appeals from the High Court are usually heard by three judges in the Court of Appeal. Cases will always be decided by judges; there are no jury trials in Singapore.

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
8. Is there usually an appeal?	Generally, where a decision finally determines the rights and obligations of the parties to a dispute, an appeal lies as of right. Leave of the Court is required where the decision appealed from is interlocutory in nature. Special leave is required to bring an appeal in the High Court, which is the ultimate appellate Court in Australia. Appeals are generally about matters of law, but in limited circumstances can extend to the facts.	No. An appeal cannot be brought without the permission of the Court. Permission will only be granted if the appeal has a real prospect of success or, in unusual cases, if there is some other compelling reason. Appeals are generally about matters of law, but in limited circumstances can extend to the facts.	Yes. Parties have the right to appeal against a judge's decision at first instance. However, where proceedings begin in the State Courts, and there has already been an appeal to the High Court, parties would need the leave of the Court before any further appeals can be made.
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	Significant civil matters are typically heard either by a state or territory Supreme Court, or by the Federal Court. Australia has a dual system of Courts consisting of those created by the Commonwealth of Australia, such as the Federal Court, and those created by the states and territories, such as the Supreme Courts. The High Court sits at the apex of the Court system and hears appeals from both Commonwealth and state/territory Courts. The Federal Court exercises jurisdiction arising under the laws of the Commonwealth of Australia, any accrued jurisdiction, and jurisdiction given pursuant to the statutory cross-vesting scheme that operates in Australia by which the jurisdiction of the Federal Court, the Family Court and each of the state and territory Supreme Courts is vested in each of the others, subject to some exceptions. The state Supreme Courts exercise jurisdiction conferred by state laws, federal jurisdiction that has been vested in them, and cross-vested jurisdiction.	Significant civil matters are heard by the High Court. Parties can represent themselves if they wish but, generally, parties engage a Hong Kong-qualified solicitor. Commonly, the solicitor may instruct a barrister (an advocate) to perform the oral advocacy before the Court and to prepare written arguments. Appeals from the High Court go to the Court of Appeal (if "leave" or permission to appeal is granted by either of those Courts), from which there may be a further appeal (with permission) to the highest Court, the Court of Final Appeal. Appeals to the Court of Final Appeal are confined to points of law of general public importance. The lawyers who acted for the claimant before the High Court can act on the appeals to the Court of Appeal and to the Court of Final Appeal.	Significant civil matters are heard by the High Court. Parties can represent themselves if they wish but, generally, it is necessary to instruct a Singapore-qualified lawyer. Appeals from the High Court go to the Court of Appeal. The lawyers who acted before the High Court can act on the appeals to the Court of Appeal. There is no further stage of appeal beyond the Court of Appeal.

	Australia
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed? (continued)	Appeals from a state Supreme Court are referred to the Court of Appeal of that state Supreme Court. Appeals from the Federal Court are referred to the Full Court of the Federal Court. The High Court is the ultimate appellate Court in Australia. Special leave is required to appeal to the High Court from either a state Court of Appeal or the Full Court of the Federal Court. Leave will generally only be granted in exceptional cases, such as where there exists an uncertainty in the law that requires clarification from the High Court, or in matters of public importance or instances of manifest injustice. Parties can represent themselves if they wish but, generally, it is necessary to instruct an Australian-qualified solicitor. It is common for the solicitor to instruct a barrister to perform the oral advocacy before the Court. In complex commercial matters, it is common to instruct a Senior Counsel who is assisted by a Junior Counsel and supported by a team of solicitors.

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	The cost of litigation will vary significantly depending on the nature of the dispute. Court fees will vary depending on the jurisdiction. In some Courts it will depend on whether the plaintiff is an individual or a corporation (and in some jurisdictions, whether the corporation is publicly listed); in other Courts the fee payable is dependent on the amount claimed. In any event, the initial filing fee is seldom more than AU$5,000. Lawyers' fees will depend upon the amount of work involved. A claim for €1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion.	The cost of litigation will vary significantly depending on the nature of the dispute. Court fees vary with the amount of the claim but overall the Court fees are relatively low. Lawyers' fees will depend upon the amount of work involved. A claim for €1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion.	Some Court fees vary with the amount of the claim as well as the volume of the documents involved and the duration of hearings and/or trials. The bulk of the fees incurred will be lawyers' fees. These depend on the rates charged by the individual lawyers as well as the amount of work involved and the complexity of the matter, rather than the quantum of the claim.
11. If we fight and win this litigation, will we get our costs back?	You will generally recover a proportion of your costs, typically between half and two-thirds of the actual costs, provided that the costs are not disproportionate to the amounts at stake. Correspondingly, if you lose the case, you will ordinarily be ordered to pay the other side's costs. Costs recovery might, however, be reduced if you have lost on some of the issues before the Court even though you have won overall and, particularly, if a claimant has refused a settlement offer from the other side that was higher than the amount eventually awarded.	You will generally recover a proportion of your costs, typically between half and two-thirds of the actual costs provided that the costs are not disproportionate to the amounts at stake. Correspondingly, if you lose the case, you will ordinarily be ordered to pay the other side's costs. Costs recovery might, however, be reduced if you have lost on some of the issues before the Court even though you have won overall and, particularly, if a plaintiff has refused a settlement offer from the other side that was higher than the amount eventually awarded.	You will generally recover a proportion of your costs, typically between half and two-thirds of the actual costs provided that the costs are not disproportionate to the amounts at stake. Correspondingly, if you lose the case, you will ordinarily be ordered to pay the other side's costs. Costs recovery might, however, be reduced if you have lost on some of the issues before the Court even though you have won overall and, particularly, if a plaintiff has refused a settlement offer from the other side that was higher than the amount eventually awarded.

	Australia	Hong Kong	Singapore
12. How long does a typical piece of litigation take, including appeals?	The duration of a case will depend upon its complexity and how much Court time is required. However, a typical case requiring a trial of up to two weeks might take between nine months and two years to reach judgment, with an appeal adding another six to nine months. If the case can be disposed of through, e.g. summary judgment (i.e. an application early in the proceedings for judgment on the basis that the other party has no reasonable prospect of success), it will be considerably quicker.	The duration of a case will depend on its complexity and how much Court time is required. However, a typical case requiring a trial of up to two weeks might take between a year or two years to reach judgment. An appeal would add a further year to the process. If a case can be disposed of through, e.g. summary judgment (i.e. an application early in the proceedings for judgment on the basis that the other party has no reasonable prospect of success), it will be considerably quicker.	The duration of a case will depend on its complexity and how much Court time is required. However, a typical case in the High Court will usually take between one and three years to reach judgment, and an appeal will usually add another year. There are procedural options to accelerate proceedings, e.g. a plaintiff may apply for a summary judgment on the grounds that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed. However, the plaintiff would have to meet a high threshold before the Court would grant a summary judgment.
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	Yes. However, the process varies between jurisdictions. State and territory Courts vary between an automatic right to discovery, a right to discovery exercisable upon request, discovery with the Court's leave, and discovery only by Court order. Discovery in the Federal Court is permitted only with the Court's leave. Parties are generally required to conduct a reasonable search for documents in their control and to disclose the existence of all relevant documents, even those prejudicial to their own case. Based on the jurisdiction, the scope of discovery will vary between all documents which are "directly relevant" to an allegation in issue, all documents which may fairly lead to a "chain of inquiry", and all documents within a class of documents ordered by the Court to be disclosed. A party cannot choose which documents it wants to disclose. For these purposes, documents include not just documents on paper, but	Yes. Each party is required to make automatic disclosure of documents shortly after the pleadings have been completed. Parties are required to disclose the existence of those documents which are, or have been, in their possession, custody or power, and which relate to the matters in question in the action. There is a requirement to disclose the existence of all relevant documents, even those prejudicial to their own case. A party cannot choose which documents it wants to disclose. Parties will need to conduct a reasonable search for documents and a party's discoverable documents must be set out and identified in a "List of Documents" (which is in a prescribed form). For these purposes, documents include not just paper documents, but also e-mails, texts, and any other kind of electronic documents. Privileged documents (see below) do not need to be disclosed.	Yes. Whether to order disclosure and the extent of that disclosure is in the discretion of the Court. However, parties are generally required to conduct a reasonable search for documents and to disclose not only documents upon which they rely but also those documents they find in the course of their search that adversely affect their case or that of another party. For these purposes, documents include not just documents on paper but also e-mails, texts and any other kind of electronic document. Privileged documents (see below) do not need to be disclosed.

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go? (continued)	also e-mails, texts, and any other kind of electronic document. Privileged documents (see below) do not need to be disclosed. Parties generally have a continuing obligation to give discovery and, if necessary, a Court may order that further discovery be given.	Only a short time is allowed by the rules for the exchange of Lists, but usually that time can be extended by agreement between the parties or by the Court. If a party is dissatisfied with the extent of its opponent's discovery, it can press the opponent for further documents. If necessary, an appropriate order can be obtained from the Court requiring a party to give further discovery and/or to verify the accuracy of its List in an affidavit. Failure to comply with such an order can have serious consequences, including dismissal of a party's claim or judgment in default being entered against the party.	
14. How is evidence obtained from witnesses for Court proceedings?	For interlocutory hearings, evidence from witnesses is usually by written statement only. For a trial, at which ultimate liability will be decided, evidence is initially by written statement but this will be followed by detailed cross-examination by the lawyer acting for the other party. Cross-examination can be lengthy and hostile.	For interim hearings, evidence from witnesses is usually by written statement only. For a trial, at which ultimate liability will be decided, evidence is initially by written statement but this will be followed by detailed cross-examination by the lawyer acting for the other party. Cross-examination can be lengthy and hostile.	For interlocutory hearings, evidence from witnesses is usually by way of affidavit (a sworn statement) only. For a trial, at which ultimate liability will be decided, evidence is initially by affidavit but this will be followed by detailed cross-examination by the lawyer acting for the other party. Cross-examination can be lengthy and hostile.
15. How wide is privilege in litigation?	The two most common forms of privilege are legal advice privilege and litigation privilege. Legal advice privilege applies to all communications made in confidence between lawyers and their clients for the dominant purpose of giving or obtaining legal advice. Litigation privilege applies to communications between parties or their lawyers and third parties for the purpose of obtaining information or advice in connection with existing or contemplated litigation. Privileged documents do not need to be disclosed to the other side.	The two most common forms of privilege are legal advice privilege and litigation privilege. Legal advice privilege applies to all communications made in confidence between lawyers and their clients for the purpose of giving or obtaining legal advice. Litigation privilege applies to all communications between parties or their lawyers and third parties for the sole or dominant purpose of obtaining information or advice in connection with existing or contemplated litigation. Privileged documents do not need to be disclosed to the other side.	The two most common forms of privilege are legal advice privilege and litigation privilege. Legal advice privilege applies to all communications made in confidence between lawyers and their clients for the purpose of giving or obtaining legal advice. Litigation privilege applies to communications between parties or their lawyers and third parties for the sole or dominant purpose of obtaining information or advice in connection with existing or contemplated litigation. Privileged documents do not need to be disclosed to the other side.

	Australia	Hong Kong	Singapore
15. How wide is privilege in litigation? (continued)	A related area is without prejudice communications with the other side. In most instances, without prejudice material cannot be placed before the Court. The without prejudice rule applies to communications with the other side (e.g. admissions or other concessions) in the course of genuine negotiations seeking to settle actual or contemplated litigation. Without prejudice material will usually be marked as such, but just because something is headed "without prejudice" does not necessarily mean that it is in fact within the rule; nor does the absence of marking mean that it is necessarily outside the rule.	A related area is without prejudice communications with the other side. In most instances, "without prejudice" material cannot be placed before the Court. The without prejudice rule applies to communications with the other side (e.g. admissions or other concessions) in the course of genuine negotiations seeking to settle actual or contemplated litigation. Without prejudice material will usually be marked as such, but just because something is headed "without prejudice" does not necessarily mean that it is in fact within the rule; nor does the absence of marking mean that it is necessarily outside the rule.	A related area is without prejudice communications with the other side. In most instances, without prejudice material cannot be placed before the Court. The without prejudice rule applies to communications (e.g. admissions or other concessions) with the other side in the course of genuine negotiations seeking to settle actual or contemplated litigation. Without prejudice material will usually be marked as such, but just because something is headed "without prejudice" does not necessarily mean that it is in fact within the rule; nor does the absence of marking mean that it is necessarily outside the rule.
16. Do the same rules on privilege apply to regulatory investigations?	Yes, unless privilege has been expressly abrogated by statute or by necessary implication, or otherwise modified by statute.	Yes. Regulatory bodies cannot compel the production of privileged material.	The position in Singapore is not entirely clear, but there are strong grounds to argue that regulatory bodies cannot compel the production of privileged material.
17. Is advice from in-house lawyers privileged?	Yes, provided that the in-house lawyer has the requisite competence and independence and is giving advice in his/her capacity as an independent legal adviser (as opposed, e.g. to advice given on business or management issues).	Yes, provided that it is legal advice (as opposed, e.g. to advice on business or management issues).	Yes, the Singapore Evidence Act has recently been amended to ensure that advice from in-house lawyers is privileged, provided that it is legal advice (as opposed, e.g. to advice on business or management issues).

Australia, Hong Kong, Singapore (continued)

	Australia	Hong Kong	Singapore
18. How can I preserve privilege when conducting an internal investigation?	There is no easy way but, assuming that litigation is not in contemplation, the investigation must be led by a lawyer and must comprise confidential legal advice if it is to have any hope of being privileged. Even then, communications with a third party can create difficulties.	There is no easy way but, assuming that litigation is not in contemplation, the investigation must be led by a lawyer and must comprise confidential legal advice if it is to have any hope of being privileged. Even then, if a report is commissioned from a third party for the purposes of the investigation, that report will not be privileged.	There is no easy way but, assuming that litigation is not in contemplation, the investigation should involve a lawyer and be undertaken for the purpose of obtaining legal advice before privilege may be asserted. Ideally, any report should also comprise legal advice to maximise the chances that the report would be covered by privilege.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	There is technically no need for a non-Australian party to appoint an agent for service in Australia, but service will be significantly quicker and cheaper if an agent is appointed. Where service under the Hague Convention is required, it can take six months or more. However, in some Australian jurisdictions, if a plaintiff is seeking to bring proceedings against a party outside the jurisdiction, it will only be able to serve that party if service outside the jurisdiction is permitted under the relevant Court rules, notwithstanding the contractual stipulation. If service outside the jurisdiction is not permitted, then the only way for a party to serve a prospective defendant in that jurisdiction is either by that prospective defendant agreeing to accept service, or by being served while physically present in the jurisdiction.	There is technically no need for a non-Hong Kong party to appoint an agent for service in Hong Kong, but service will be significantly quicker and cheaper if a service agent is appointed. Consideration should be given as to whether the defendant or officer of a company is likely to refuse to accept service and also to the possibility that the individual concerned is likely to understand only Cantonese, Mandarin or another language, in which case the person serving should be prepared to inform the individual in English and Cantonese, Mandarin or that other language. The Hong Kong Court is seised when the claim is issued, but it can take some time to serve the claim outside Hong Kong, as well as often requiring translations of the documents and local legal advice. It can easily take a month for service to be effected; where service under the Hague Convention is required, it can take six months or more.	There is technically no need for a non-Singapore party to appoint an agent for service in Singapore, but service will be significantly quicker and possibly cheaper if an agent is appointed.

Australia

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Continental Europe

Belgium, France, Germany

	Belgium	France	Germany
1. How long is the limitation (prescription) period?	The standard limitation period for contractual claims is 10 years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract. The standard limitation period for tort claims is five years from the day the victim has knowledge of the damage and of the identity of the debtor and, in any event, 20 years from the day the tortious act was committed. Significantly longer limitation periods may apply if the tortious act also qualifies as a criminal offence. Other (shorter) limitation periods might apply depending on the cause of action, e.g. in cases of insurance claims or claims against the State.	The standard limitation period in commercial matters is five years from accrual of the cause of action. A cause of action in contract or in tort accrues as soon as the creditor is aware (or should be aware) of the facts enabling it to bring the claim. Other limitation periods might apply depending on the cause of action, e.g. in cases of personal injury (10 years).	The standard limitation period in commercial matters is three years from accrual of the cause of action. A cause of action in contract accrues once all conditions of a claim are met and after the creditor obtained knowledge of cause and the identity of the debtor. In most damages claims (contractual or tort), a cause of action accrues when damage is actually suffered. Other limitation periods might apply depending on the specific cause of action, e.g. in cases of personal injury.
2. Can I toll the limitation period?	Yes. Parties can agree on a suspension or extension of the limitation period. Subject to certain conditions being met, a formal notice letter sent by an external lawyer suspends limitation for one year. In specific cases, such as insurance claims, the limitation period is tolled by law during negotiations.	Yes. Under certain conditions, the limitation period is tolled if the parties agree to start mediation or conciliation. The parties can also agree on a suspension or extension of the limitation period. The maximum extension of the limitation period is 10 years.	Yes. If the parties start serious negotiations about the cause of action, the limitation period is tolled by law. The parties can also agree on a suspension or extension of the limitation period.

	Belgium	France	Germany
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	Preservation of documents is important. Destruction of a relevant document can lead to the Court drawing adverse inferences from the absence of documents. Companies are obliged by law to preserve various documents for tax and/or accounting purposes. The most important rules provide for a retention period of five or 10 years. However, it is unusual for Belgian Courts to order the submission of documents. This applies especially if documents are not specifically identified or if trade secrets are involved. Therefore, insufficient document retention policies might not have the same impact as, e.g. in England.	Preservation of documents is important. Additionally, it is essential to identify the key persons who have knowledge of the facts and to preserve their archives (including e-mail accounts), especially if there is a risk that these persons might leave the company. In general, there is no penalty if documents are not preserved, but the destruction of relevant documents can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of these documents. Companies are obliged by law to preserve all business-related documentation. The most important rules provide for a retention period of five years (e.g. contracts between professionals or banking documents) or 10 years (e.g. accounting documents and commercial correspondence). It is possible for French Courts to order the submission of documents, if the request for document production is justified by a legitimate interest and is relevant to the case. If trade secrets are involved, the Court can take this into consideration and balance the opposing interests at stake.	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Companies are obliged by law to preserve all business-related documentation. The most important rules provide for a retention period of six years (e.g. business letters, *Handelsbriefe*) or 10 years (e.g. accounting documents/receipts, *Handelsbücher/Buchungsbelege*). However, it is unusual for German Courts to order the submission of documents. This applies especially if documents are not specifically identified or if trade secrets are involved. Therefore, insufficient document retention policies might not have the same impact as, e.g. in England.

Belgium, France, Germany (continued)

	Belgium	France	Germany
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Belgian Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Belgian Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Belgium, and if the stay is necessary for the proper administration of justice. A Belgian Court is seised when the statement of claim is served on the defendant by a bailiff and is afterwards filed with the Court. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the French Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the French Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in France, and if the stay is necessary for the proper administration of justice.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the German Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the German Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Germany, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in Germany, however, the German Courts would be likely to proceed with the matter. The recognition of a foreign judgment in Germany depends on a number of conditions, the most important being the principle of "reciprocity" (i.e. whether or not

	Belgium	France	Germany
4. Is it important for the Court to be first seised and, if so, when is the Court seised? (continued)		A French Court is seised when the statement of claim has been served on the defendant by a bailiff at the claimant's request and is afterwards filed with the Court's registrar. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.	German judgments would generally be recognised in the respective foreign state). A German Court is seised when the statement of claim is served on the defendant by the Court. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.
5. Are there any steps I need to take before commencing proceedings?	Normally, no steps have to be taken before commencing Court proceedings, but a Court fee retainer (*droit de role/rolrecht*), which will not exceed €150 in any event, is due before filing a claim.	Normally, no steps have to be taken before commencing Court proceedings. A claimant may have to pay a low Court fee when initiating proceedings before a commercial Court.	Normally, no steps have to be taken before commencing Court proceedings, but a Court fee retainer is due before filing a claim.
6. Is there any interim relief that might improve my position?	The principal relief that might be available is an interim injunction (*saisie conservatoire/bewarend beslag*), whether to hold the ring pending resolution of the dispute or to freeze the debtor's assets for subsequent enforcement purposes. For example, if you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The question at the interim stage will be where the balance of convenience lies, including whether damages would ultimately prove to be an adequate remedy.	French law provides for several types of interim relief, including, e.g. a Court order to freeze the debtor's movable assets (*saisies conservatoires*), whether tangible or intangible. The conditions for such an order are generally a well-founded claim and a risk threatening the recovery of assets from the debtor (e.g. the threat of insolvency). Additionally, provisional mortgages or pledges can be obtained on movable or immovable assets. Such measures have to be authorised by a French Court, which will grant such relief *ex parte* in rather formalistic proceedings.	The principal relief that might be available is a preliminary Court order to freeze the debtor's assets (*Arrest*), to preserve a certain status quo or to prohibit the disposal of a certain asset (*Einstweilige Verfügung*). If, e.g. you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The conditions for the interim order are generally whether the applicant has a cause of action (*Anordnungsanspruch*) and reasons for a preliminary order (*Anordnungsgrund*). The Court decides by way of summary judgment.

Belgium, France, Germany (continued)

	Belgium	France	Germany
6. Is there any interim relief that might improve my position? (continued)	More generally, a Court can grant a freezing injunction if the claimant has a good arguable case on the merits and there is a real risk that the defendant will deal with its assets with the result that they are not available if judgment is given against it or there is an indication that the defendant is in a weak financial position. The Court decides by way of summary judgment. Belgian Courts may grant interim relief *ex parte*, but they usually do not grant anti-suit injunctions. The defendant can claim damages in the event that the injunction proves to be unjustified and harmful. However, the amount of damages awarded is usually relatively low.	It is also possible to obtain a Court order to preserve a status quo or to restore a situation pending the outcome of a dispute on the merits. For such an order, the requesting party has to show that the matter is urgent and that there is a need to avoid imminent damage or to put an end to a manifestly illegal situation. These measures are usually granted after summary proceedings *inter partes*. It is not common practice for French Courts to grant anti-suit injunctions. Interim measures can be granted in support of proceedings in France or in support of proceedings elsewhere, but in the latter case there must be a real connecting link between the subject matter of the measures sought and France (e.g. the injunction must be directed to assets in France). If the claimant's cause of action cannot be reasonably challenged, the judge may order that a provisional deposit has to be paid to the creditor, or the judge may grant an interim order for specific performance. This may be the case even if there is no specific urgency. French law grants the defendant a damages claim in the event that the injunction proves to be unjustified and harmful.	This means that a Court can grant a freezing injunction if the claimant has a good arguable case on the merits and if the matter is "urgent", e.g. if there is a real risk that the defendant will dispose of its assets with the result that they are not available if judgment is given against it. This commonly requires "unusual conduct" on the part of the defendant; carrying out transactions in the ordinary course of business or the threat of insolvency will not suffice even if the result reduces the assets that might be available for enforcement purposes. Freezing orders can be granted either in support of proceedings in Germany or in support of proceedings elsewhere, but in the latter case there must be a real connecting link between the subject matter of the measures sought and Germany (e.g. the injunction must be directed to assets in Germany). German Courts may grant interim relief *ex parte*, but they usually do not grant anti-suit injunctions. The German Code of Civil Procedure grants the defendant a damages claim in the event that the injunction proves to be unjustified and harmful.

	Belgium	France	Germany
7. What judges or other persons will hear my case?	At first instance, a civil case will be heard by either a single judge or three judges. In commercial matters, a single judge is assisted by two lay judges with commercial backgrounds. Appeals are heard by one or three judges. Judges in Belgium must hold a Master of Laws degree. Some judges are former lawyers, while others started their careers as judges. There are no jury trials in Belgium, save for the most severe criminal offences.	At first instance, commercial cases will be heard by lay judges who are elected by their peers. That said, a new regulation relating to the role and composition of commercial Courts is currently under discussion. Civil cases will be heard by either one or three professional judges. An appeal will usually be heard by three judges. Most professional judges in France go to magistrate school immediately following their legal studies. Some judges have worked in another legal profession, usually as a lawyer or as an in-house counsel. Civil cases will always be decided by judges. There are jury trials for major criminal offences only.	At first instance, the case will be heard by either a single judge or three judges (in significant and/or difficult matters). In specific commercial matters, a single judge is assisted by two lay judges with commercial background. Appeals are usually heard by three judges. Judges in Germany – as well as all lawyers – have passed two state examinations and have received at least two years of judicial training. Cases will always be decided by judges; there are no jury trials in Germany.
8. Is there usually an appeal?	Normally, an appeal can be brought without the permission of the Court in all matters. The appeal stage is not restricted to questions of law. The appeal Court will conduct a full review of the facts as well. It is also always possible to appeal to the Supreme Court on a point of law (also for claims for which an ordinary appeal is not possible).	Normally, an appeal can be brought by any party without the permission of the Court. The appeal may concern both matters of law and the facts, and the parties are entitled to submit further facts, provided that they support their initial claim.	Normally, an appeal can be brought by any party without the permission of the Court. The appeal stage is generally restricted to questions of law and to the establishment of facts that have wrongfully been ignored by the Court of first instance.

Belgium, France, Germany (continued)

	Belgium	France	Germany
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	Normally, civil matters are heard by the Court of first instance (*tribunal de première instance/rechtbank van eerste aanleg*) while commercial matters are heard by the commercial Court (*tribunal de commerce/rechtbank van koophandel*). Appeals from the Court of first instance and the commercial Court are heard by the Court of appeal (*Cour d'appel/Hof van beroep*). A further appeal, restricted to points of law, may be filed with the Supreme Court (*Cour de cassation/Hof van cassatie*). Parties can represent themselves if they wish but, generally, they will be represented by an external lawyer admitted to one of the Belgian Bars. In civil matters before the Supreme Court, the parties must be represented by a lawyer admitted to the Bar of the Supreme Court (*Avocat près la Cour de cassation/Advocaat bij het Hof van Cassatie*).	Significant civil cases are heard by a civil Court (*Tribunal de Grande Instance*) and commercial cases are heard by a commercial Court (*Tribunal de Commerce*). Before the *Tribunal de Grande Instance*, parties need to be represented by a lawyer admitted to the local bar. It is not compulsory before commercial Courts, but, in practice, advisable. Regular appeal proceedings are heard by a Court of appeal (*Cour d'appel*). Since January 2012, it is no longer obligatory to instruct a specific lawyer (*avoué*) for proceedings before a Court of appeal. In most appeal proceedings, parties simply need to be represented by a lawyer admitted to the local bar, but sometimes it is still advisable to instruct a former *avoué*. A further appeal, generally restricted to questions of law, may be filed against the final judgments delivered by the Court of appeal. It is decided by the French Supreme Court (*Cour de Cassation*), where the parties generally need to be represented by lawyers admitted to the French Supreme Court (*avocats aux conseils*).	Significant civil matters are heard by a Regional Court (*Landgericht*) at first instance. With limited exceptions, a party must be represented by a lawyer admitted in Germany. Regular appeal proceedings are heard by the Higher Regional Court (*Oberlandesgericht*), also with the mandatory assistance of a lawyer admitted in Germany. A further appeal, restricted to points of law (*Revision*), may be filed against the final judgment delivered by the appellate Court. It is decided by the Federal Court of Justice (*Bundesgerichtshof*), before which a party must be represented by one of the 46 lawyers (as of January 2015) admitted before the Federal Court of Justice's Civil Senates.

	Belgium	France	Germany
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	Court fees are very low (less than €150) and do not depend on the amount claimed. A registration duty of 3% of the amount awarded is due to the Belgian State if the prevailing party is awarded €12,394.68 or more. The registration duty must, in principle, be paid by the losing party and only in limited cases by the prevailing party. Lawyers' fees will depend upon the amount of work involved. A claim for €1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion.	Court fees (*dépens*) are only partly based on the amount in dispute and are usually quite low. They are calculated by the Court's registrar and are seldom more than a few hundred Euros. Lawyers' fees will generally depend upon the amount of work involved. A claim for €1 million that is factually complex and requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion. In first instance civil cases, statutory lawyers' fees may accrue in addition to the fees owed to the lawyer in charge of the case, as the party has to be represented before Court by a lawyer admitted to the local bar. Unless agreed otherwise, these fees are generally based on the amount of the claim, but can, by mutual agreement, be based on different criteria, e.g. the work involved or the number of hearings. Statutory lawyers' fees of €3,111.25 accrue for a claim of €1 million, a claim of €10 million costs €30,111.25 and a claim of €100 million €300,111.25.	Court fees depend on the amount of the claim. First instance Court fees of €16,008 accrue for a claim of €1 million, a claim of €10 million costs €113,208 and a claim of €30 million or more triggers Court fees of €329,208. Statutory (i.e. minimum) lawyers' fees depend on the amount of the claim and are generally similar to the Court fees (see above). In commercial matters, it is customary for lawyers to be paid on the basis of time fees. If so, lawyers' fees will depend upon the amount of work involved.
11. If we fight and win this litigation, will we get our costs back?	The losing party has to pay to the successful party a "proceedings indemnity" (*indemnité de procedure/ rechtsplegingsvergoeding*). The amount of the proceedings indemnity depends on the amount of the claim and is fixed by Royal Decree.	Not entirely. The Court usually orders the losing party to pay a proportion of the successful party's costs. However, this decision is based on fairness considerations and cost recovery is often far lower than the amount actually paid by the successful party. In rare cases, French Courts may grant damages if the procedure was conducted abusively.	Costs follow the event. The prevailing party can usually recover Court costs and statutory (i.e. minimum) lawyers' fees, but not time fees exceeding the statutory amount. However, if specific means of challenge or defence (e.g. certain means of evidence) were unsuccessful, a Court may order a party to bear the related costs even if that litigant prevailed on the merits.

Belgium, France, Germany (continued)

	Belgium	France	Germany
11. If we fight and win this litigation, will we get our costs back? (continued)	For claims between €500,000 and €1,000,000, the amount of the proceedings indemnity varies between €1,100 and €22,000, depending on the complexity of the claim and/or other elements that the Court deems relevant. For claims above €1,000,000 it varies between €1,100 and €33,000. The successful party will not recover its lawyers' fees in excess of the amount of the proceedings indemnity, but will recover its other costs, e.g. the costs for the service of the statement of claim.		
12. How long does a typical piece of litigation take, including appeals?	The duration of a case will depend upon its complexity and how much Court time is required. Belgian civil Court proceedings are dominated by written submissions. In most cases, there is only one hearing of an average duration between one and three hours. A typical civil case might take between two and three years, whereas commercial cases are more likely to take between 18 months and two years, with an appeal adding another two to four years. Civil proceedings before the Supreme Court are likely to take one to two years. If a case is "straightforward" (e.g. the defendant does not dispute the claim, but requests payment in instalments), it can be disposed of through summary judgment, which will be considerably quicker.	The duration of a case will depend on its complexity and how many submissions and hearings are required. A typical case might take between 12 and 18 months to reach judgment. Proceedings will take a similar amount of time before a Court of appeal and the *Cour de Cassation*, respectively. At all stages and subject to the circumstances of the case, judges can impose shorter time limits if they consider it to be necessary or appropriate. If the rights of a party are in peril, it may request that the case be heard in priority and, under specific circumstances, quicker proceedings may be available.	The duration of a case will depend on its complexity and how many submissions and hearings are required. German civil Court proceedings are dominated by written submissions. A typical case might take between nine months and two years to reach judgment, with an appeal adding another one to two years. There are procedural options to accelerate proceedings, e.g. by applying for a summary judgment on the basis of only documentary evidence (*Urkundsprozess*) in order to receive a "quick" and preliminarily enforceable conditional judgment. In this event, however, the opponent can apply for subsequent proceedings (*Nachverfahren*) in which wider evidence is admissible.

	Belgium	France	Germany
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	The concept of documentary disclosure is historically very limited in Belgium. Each party is, in principle, free to determine which documents it will submit. The Court may, however, direct one of the parties or a third party to produce records or documents in its possession, if the document is clearly identified (fishing expeditions are not allowed) and it is relevant for the outcome of the case. Such orders are unusual.	Not exactly. In principle, each party provides the other with the evidence on which its claims are based. The Court may, upon request, direct one of the parties to produce evidence in its possession. For such an order, there has to be reasonable certainty that the respective document exists and that it may be relevant to the case. For an order to produce documents prior to the lawsuit, the requesting party will also have to establish a connection between the request and the proceedings. The judge may also, if he considers that it is appropriate and necessary, order a third party to produce evidence in its possession. This applies even if trade secrets are at stake, but the third party can claim a "lawful impediment" (e.g. a threat to trade secrets) which will be considered by the Court in its discretion.	The concept of documentary disclosure is historically very limited in Germany. The Court may direct one of the parties or a third party to produce records or documents, as well as any other material in its possession, to which one of the parties has made reference. Although this concept appears to be rather wide, the Courts generally interpret it very narrowly. The Courts usually require a document to be relevant to the outcome of the lawsuit and to be specifically identified. Third parties may also refuse the production of documents if trade secrets are at stake or if the disclosure would be unreasonable on other grounds.
14. How is evidence obtained from witnesses for Court proceedings?	Witness evidence is very uncommon in Belgium. Witnesses are heard in Court. The most important statements are recorded by the clerk of the Court and set out in the hearing minutes. Parties can submit written statements, but they cannot replace appearance in Court. The witness examination before Belgian Courts is mostly conducted by the judge. Lawyers have the right to propose further questions, but cannot force the Court to ask a specific question.	In civil and commercial matters, witnesses are rarely heard in Court. Usually, the parties provide written witness statements. Witness examination before French Courts is conducted by judges.	Witnesses are generally heard in Court. The most important statements are recorded by the judge and stated in the hearing minutes. Written statements cannot be used in place of appearance in Court. Witness examination before German Courts is mostly conducted by the judges. Lawyers have the right to ask further questions.

Belgium, France, Germany (continued)

	Belgium	France	Germany
15. How wide is privilege in litigation?	Communication between a party and its external lawyer is covered by professional secrecy. Neither the party nor its external lawyer can be forced to disclose client-related documents. The lawyer has the statutory right to remain silent if examined as a witness. The ethical rules enacted by the Belgian Bar associations even go further and direct lawyers to remain silent in all circumstances. The breach of professional secrecy by a lawyer is a criminal offence. Correspondence exchanged between Belgian lawyers is, in principle, confidential and cannot be produced in Court or, if produced, be retained as valid evidence.	As there are no discovery proceedings in France, the French concept of legal privilege differs from the principle in common law countries. Under French law, any correspondence (whether containing legal advice or not) between a client and an external lawyer is strictly confidential, as is all lawyer work product. They cannot be subject to forced disclosure in civil, commercial, regulatory or criminal matters. The lawyer's duty of confidentiality includes the lawyer's right to remain silent if examined as a witness. The concept of privilege is therefore extremely wide, strong and generally well respected by investigatory authorities. This applies irrespective of the matter being transactional or contentious and also to communications between external lawyers. Unless labelled "*lettre officielle*", such communications cannot be disclosed to any other person (including clients). However, if a client decides to disclose a privileged document to a third party, it is no longer protected.	The concept of legal privilege is not as wide and well-developed as in US or English law because document production obligations under German law are more restrictive. Legal privilege in Germany originates from a lawyer's duty to keep the client's affairs confidential. It is today a cornerstone of the rule of law. The lawyer's duty of confidentiality is legally protected by the lawyer's right to remain silent if examined as a witness. This also entitles the lawyer to refuse the production of client-related documents in civil proceedings. According to leading scholars, a party cannot be ordered to produce any lawyer's work products in its possession because of the confidential nature of the relationship with its lawyer.

	Belgium	France	Germany
16. Do the same rules on privilege apply to regulatory investigations?	Yes. Regulatory bodies cannot compel the production of privileged material.	Yes. Regulatory bodies cannot compel the production of privileged material.	No. In regulatory investigations, the rules of administrative proceedings or criminal proceedings apply. An external lawyer is still obliged to claim confidentiality, and client-related documents in the lawyer's possession are usually protected from seisure by state authorities. This rule does not apply to client documents that have been deliberately deposited at the law firm's office or if the lawyer's own conduct is the subject of the investigation. Unlike in civil proceedings, documents in a client's organisation can usually be seised with no exception for lawyer's work product.
17. Is advice from in-house lawyers privileged?	Legal advice from in-house lawyers to their employer benefits from a limited privilege. The opponent cannot force the disclosure of this advice in civil proceedings. However, if you are facing an EU competition investigation, advice from in-house lawyers is not privileged (according to the most recent case law, it will be privileged if the investigation is being conducted by domestic competition authorities).	Advice, correspondence and work product from in-house lawyers are protected only when exchanged with external lawyers. Otherwise, they are not covered by legal privilege, even when they relate to actual litigation.	In principle, the *Bundesrechtsanwaltsordnung* does not distinguish between in-house lawyers and external lawyers as to their duty of confidentiality. However, some Courts have doubted whether in-house lawyers should enjoy the same confidentiality rights as external lawyers. The Courts have applied the following status-related and functional tests to decide this question: ■ Is the in-house lawyer sufficiently independent to fulfil the role envisioned by the *Bundesrechtsanwaltsordnung*? ■ Is the in-house lawyer acting in his/her typical role as legal adviser or is the in-house lawyer acting like a manager/entrepreneur? If the in-house lawyer is not sufficiently independent and/or acts like a manager/entrepreneur, Courts may find that the in-house lawyer's advice is not privileged.

Belgium, France, Germany (continued)

	Belgium	France	Germany
18. How can I preserve privilege when conducting an internal investigation?	There is no way to "preserve privilege" given the fact that the documents, information and/or other materials that will be reviewed in the course of the internal investigation are typically not privileged. If the investigation is conducted by an external lawyer, only his/her findings and reports will be privileged, but not the materials his/her advice is based on.	As work product by in-house lawyers is not protected against seisure, the best way to preserve privilege is to have investigations conducted by external lawyers. In addition and as basic precautions, it may be advisable to (i) mark correctly as such any correspondence received from or sent to an external lawyer, and (ii) avoid forwarding to third parties any correspondence or document received from or sent to an external lawyer.	The same rules as under question no. 16 apply.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	There is technically no need for a non-Belgian party to appoint an agent for service in Belgium, save in specific proceedings (e.g. when a foreign company makes a conservatory attachment on goods situated in Belgium). Service will be significantly quicker and cheaper if an agent is appointed. However, whether a service agent should be appointed has to be assessed on a case-by-case basis.	There is technically no need for a non-French party to appoint an agent for service in France before the commencement of a lawsuit. However, local service to an appointed agent for service is often faster and cheaper, as no translation is required even for non-French and non-French-speaking parties. Once the lawsuit has started, parties are usually deemed to have elected domicile at their lawyer's law firm.	There is technically no need for a non-German party to appoint an agent for service in Germany prior to a lawsuit. However, the Court seised may order a foreign party to appoint a service agent. As service will be significantly quicker and cheaper if an agent is appointed for a party which is not resident in Germany, it may be beneficial for one or more of the parties to a contract to appoint a service agent in Germany.

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Italy, Luxembourg, Netherlands

	Italy	Luxembourg	Netherlands
1. How long is the limitation (prescription) period?	The standard limitation period is 10 years from the day on which the right can be enforced, i.e. there are no legal obstacles to its exercise. The law provides shorter limitation periods in particular cases, e.g. five years for claims for damages arising out of a tort.	The standard limitation period is 30 years. In commercial matters, the limitation period is 10 years. In contractual matters, the limitation period commences from the moment Court proceedings could be initiated against the debtor (i.e. from the moment when the contractual obligation is due). In tortious matters, the limitation period commences once the victim becomes aware of the damage. Shorter limitation periods (from six months to five years) may apply depending on the specific cause of action.	The standard limitation period in commercial matters is five years from accrual of the cause of action. A cause of action in contract accrues once performance of the claim can be demanded. In most damages claims (contractual or tort), a cause of action accrues once the person suffering the damage becomes aware of the damage and the identity of the debtor. However, for such claims the limitation period ends at the latest 20 years after the damage is actually suffered.
2. Can I toll the limitation period?	Yes. The limitation period may be suspended in certain circumstances provided for by law. However, any agreement intended to modify the limitation period is void. That said, parties can still agree that a claim is enforceable even if the limitation period has already ended. The period can also be subject to interruption, leading to the limitation period commencing anew. This will be the case when the right is exercised by the holder by way of notification of the act when initiating legal proceedings. In addition, any formal notification to the debtor interrupts the limitation period.	The limitation period can be suspended or interrupted. The limitation period cannot be extended by the parties. The parties are, however, entitled to shorten the limitation period. According to scholars, the parties can also agree to suspend the limitation period or agree on circumstances that interrupt the limitation period.	Yes. The accrual of the limitation period will start again at certain events, including acknowledgment of the right by the debtor or sending an explicit and unequivocal written notice to the debtor that all rights to performance are reserved.

	Italy	Luxembourg	Netherlands
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. There is a statutory requirement to preserve accounting records for a period of 10 years from the date of the last recording. For the same period, invoices, letters and telegrams received and copies of those sent must be preserved. However, it is unusual for Italian Courts to order the disclosure of documents. This applies especially if documents are not specifically identified.	Preservation of documents is important. Absence of relevant documents can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. The general rule is that companies are obliged by law to preserve all business-related documentation for a period of 10 years. However, Luxembourg Courts only order the submission of documents upon request of one of the parties and may also fix additional conditions (e.g. regarding the persons who may review the documents). This applies especially if trade secrets are threatened.	Preservation of documents is often important, although there is no legal obligation to preserve documents when litigation is expected. If a party no longer has a document in its possession and is therefore not able to submit it to the Court, the judge is free to draw inferences from the absence of this document. If documents have been destroyed deliberately to avoid submission to the Court, this may lead to the Court drawing adverse inferences. Companies are obliged by law to preserve all business-related documentation. The most important rules provide for a retention period of seven years, which applies e.g. to agreements, annual accounts and information about financial transactions. It is possible for an opposing party in Court proceedings to request the Court to order the submission of certain documents. The fact that a document contains trade secrets does not necessarily prevent the Court from ordering its production. However, there are strict requirements to be met before a Court makes such an order.

Italy, Luxembourg, Netherlands (continued)

	Italy	Luxembourg	Netherlands
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Italian Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Italian Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Italy, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in Italy, however, the Italian Courts would be likely to proceed with the matter. The recognition of a foreign judgment in Italy depends on a number of conditions.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Luxembourg Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Luxembourg Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Luxembourg, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in Luxembourg, however, the Luxembourg Courts would be likely to proceed with the matter. Under Luxembourg law, recognition of a foreign judgment depends on a number of conditions, the most important being that the foreign judgment does not infringe Luxembourg public order and that the foreign	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Dutch Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Dutch Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in the Netherlands, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in the Netherlands, however, the Dutch Courts would be likely to proceed with the matter.

	Italy	Luxembourg	Netherlands
4. Is it important for the Court to be first seised and, if so, when is the Court seised? (continued)	An Italian Court is seised when the statement of claim is filed with the Court. This applies in relation to other Italian Courts as well as in an EU context.	Court which rendered the judgment was competent to hear the case according to Luxembourg conflict of jurisdiction rules. A Luxembourg Court is seised when the statement of claim is served on the defendant. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.	If claims are instituted by a writ, a Dutch Court is seised when the statement of claim is served on the defendant by a bailiff, provided that subsequent formalities (filing with the Court) are performed in due time. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.
5. Are there any steps I need to take before commencing proceedings?	Normally, no steps are needed before commencing Court proceedings, but a Court fee retainer is due before filing a claim and it is usual for a lawyer to send a warning to the counterparty. However, for a number of civil and commercial matters, there is a mandatory out of Court mediation procedure as a condition for a claim to be admitted in Court. In order to reduce the current workload of Italian Courts, the parties of a proceeding can further resort to a newly introduced procedure of "assisted negotiations" (*negoziazione assistita*) which incentivises an amicable solution of the parties' dispute.	In principle, no steps need to be taken before commencing Court proceedings.	There is a (non-statutory) code between lawyers that stipulates that lawyers should inform the opposing counsel before commencing Court proceedings. When such notification is given, a lawyer should, in principle, give the opposing party a reasonable amount of time to consider the claim. However, violation of this code may only lead to disciplinary sanctions against the lawyer.
6. Is there any interim relief that might improve my position?	The principal relief that might be available is an interim injunction to remedy the risk of being unable to enforce the right. These measures grant a creditor protection against the risk of non-payment and make the debtor's assets inalienable or impose constraints on them.	Luxembourg law provides certain kinds of interim relief that might improve the position of a party. One relief that might be available is attachment (*saise-arrêt*). A creditor may file a motion with the Court for leave to freeze the assets of its debtor and to entrust them to a third party. In certain circumstances, such attachment can be performed without prior leave from the Court.	The most important interim relief is a conservatory attachment (*conservatoir beslag*) of the debtor's assets to prevent the debtor selling or encumbering that asset before judgment. In order to levy a conservatory attachment, leave from the injunction judge (*voorzieningenrechter*) at the district Court is required. In the request, the creditor must set out e.g. the nature of its right regarding the debtor and the nature of the conservatory attachment to be levied, such as an attachment of shares, real estate or bank accounts.

Italy, Luxembourg, Netherlands (continued)

	Italy	Luxembourg	Netherlands
6. Is there any interim relief that might improve my position? (continued)	For example, one interim injunction commonly used is the precautionary seisure, which preserves assets from dissipation. The conditions for obtaining the interim injunction are (i) a danger to which the right may be exposed (i.e. delay or non-availability) (*periculum in mora*) and (ii) a likelihood of the existence of the right itself (*fumus boni iuris*). The Court decides interim injunctions by way of summary judgment. This means that a Court can grant the injunction if the claimant has a good arguable cause on the merits and there is a real risk that its right might be threatened in the course of the proceedings. Such risk is assessed on a case-by-case basis, but the threat of insolvency may suffice. Injunctions can be granted either in support of proceedings in Italy or in support of proceedings elsewhere, but in the latter case several requirements have to be satisfied (one of the most important being compliance with the Italian "public order"). Italian Courts may, under specific circumstances, grant interim relief *ex parte*, but they do not grant anti-suit injunctions. Italian law entitles the defendant to claim damages in the event that the injunction proves to be unjustified and harmful and the claimant acted in bad faith.	A party can also initiate summary proceedings where a judge can order certain preliminary measures without pre-judging the substance of the case. The main summary proceedings are *référé-urgence* and *référé-voie de fait*. In *référé-urgence*, the judge can order any preliminary measure. *Référé-urgence* is subject to (i) urgency, and (ii) absence of a serious challenge against the claim. The question whether there is "urgency" will be assessed on a case-by-case basis, but the threat of insolvency may suffice. In *référé-voie de fait*, the judge can order conservatory or reinstatement measures either to prevent imminent damage or to stop an obviously unlawful disturbance. Interim measures can be granted in support of proceedings in Luxembourg or in support of proceedings elsewhere. Luxembourg Courts may, under specific circumstances, grant interim relief *ex parte*. They do not grant anti-suit injunctions. Luxembourg law grants the defendant a damages claim in the event that the injunction proves to be unjustified and harmful.	Before granting such leave, the judge summarily ascertains whether a creditor has *prima facie* an arguable case. In most cases, a leave is granted *ex parte*. Leave for an attachment is relatively easy to obtain in the Netherlands in comparison to other jurisdictions, although the requirements differ according to the type of asset. It is, e.g. more difficult to attach real estate (with an additional requirement to substantiate that there is a reasonable chance that the debtor will dispose of or encumber it) than to attach bank accounts. Another option to obtain immediate relief is initiating preliminary injunction proceedings (*kort geding*) before the injunction judge with competence over the dispute. Such competence may also be assumed in support of proceedings elsewhere, provided that there is a sufficient connection with the Netherlands (e.g. the injunction is directed at assets in the Netherlands). Such a preliminary order may consist of an order or injunction to be reinforced by a penalty payment. Dutch Courts do not grant anti-suit injunctions. By nature, preliminary decisions are temporary; therefore, the injunction judge cannot rule on matters of law between the parties. Matters of law can be decided only in proceedings on the merits. In such proceedings the Court is not bound by the judgment in the preliminary relief proceedings. In principle, Dutch law grants the defendant a damages claim in the event that the injunction proves to be unjustified and harmful.

	Italy	Luxembourg	Netherlands
7. What judges or other persons will hear my case?	At first instance, the case will be heard by either one judge or three judges, depending on the dispute in question. Appeals are heard by three judges. In small matters, cases are heard by a Giudice di Pace, and, in such cases, appeals are heard by a single judge. In order to reduce the current workload of Italian Courts, the parties can (both at first instance and on appeal) jointly request that the case is referred to arbitration before an arbitral tribunal composed of qualified lawyers. In Italy, judges must attend a specialized two-year course and pass an examination followed by an obligatory six-month course at the School of Magistrates. Civil cases will always be decided by judges; there are jury trials for major criminal offences only.	At first instance, the case will be heard by either one judge or three judges, depending on the matter and the Court seised. In civil and commercial matters, the case will be heard by professional judges. On appeal, the case will be heard by three judges. Judges are former practising lawyers with at least two years' experience. Cases will always be decided by judges; there are no jury trials in Luxembourg.	At first instance, the case will be heard by either a single judge or three judges (in significant and/or difficult matters). There are exceptions, such as for the Enterprise Court (*Ondernemingskamer*), a chamber of the Amsterdam Court of Appeal which has special expertise in corporate disputes. This Enterprise Court consists of three judges assisted by two lay judges with professional expertise (usually accountants). Appeals are often heard by three judges, but can be heard by a single judge. Judges are required to have at least two years' legal work experience and are trained for at least four years. There are no jury trials in the Netherlands.
8. Is there usually an appeal?	Normally, an appeal can be brought by any party without the permission of the Court (provided that the appeal is not excluded by law or agreement of the parties). On appeal, new issues cannot be raised unless they are raised *ex officio*.	Yes. Except for claims of very low value, an appeal is always possible. On appeal, both questions of fact and questions of law are re-examined.	In general, an appeal can be brought by any party without the permission of the Court. The appeal is not restricted to questions of law and it is also possible to present new facts.
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	Significant civil matters are heard at first instance by a regional Court (*Tribunale*). Appeals go to the Court of Appeal (*Corte d'appello*). Parties must be represented by a lawyer qualified in Italy. An application for a further appeal, restricted to points of law, may be made to the Supreme Court (*Corte Suprema di Cassazione*), where only specially-qualified lawyers may represent the parties.	Luxembourg procedure distinguishes between civil and commercial matters, the latter mainly concerning proceedings between merchants. Significant civil matters are heard by the District Court (*Tribunal d'Arrondissement*), sitting in civil matters. Parties must be represented by a lawyer (*avocat à la Cour*) admitted in Luxembourg.	Regular civil matters are heard at first instance by a district Court (*rechtbank*). With limited exceptions, a party must be represented by a lawyer admitted in the Netherlands. Regular appeal proceedings are to be conducted before the Court of appeal (*gerechtshof*), also with the mandatory assistance of a lawyer admitted in the Netherlands.

Italy, Luxembourg, Netherlands (continued)

	Italy	Luxembourg	Netherlands
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed? (continued)		Significant commercial matters are heard by the District Court (*Tribunal d'Arrondissement*), sitting in commercial matters. Representation of parties by a lawyer is not mandatory, but usual in practice. Appeals against judgments rendered by the District Court, whether sitting in civil or commercial matters, are brought before the Court of Appeal (*Cour d'appel*), where representation by a lawyer is mandatory. In rare cases, a further appeal, restricted to points of law (*pourvoi en cassation*), may be filed against the appeal judgment with the Supreme Court (*Cour de Cassation*). The parties must be represented by a lawyer admitted in Luxembourg.	A further appeal, restricted to points of law, may be filed against the judgment of the appellate Court. It is decided by the Supreme Court (*Hoge Raad*). For this final appeal, a party must be represented by a lawyer qualified to plead in Supreme Court cases.
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	In Italy a Court fee must be paid in order to file a claim. Court fees depend on the value of the claim. First instance Court fees of €1,466 (€2,199 in appeal) accrue for a claim of €520,000 or more. Court fees for claims of indeterminable value are €450 (€675 in appeal). Lawyers' fees depend on the amount of the claim and are based on tariff rates. In civil matters, the lawyers and the parties very often agree on remuneration on the basis of time fees. In this case, costs will depend on the amount of work involved.	The calculation of the amount of the "costs" (*frais et dépens*), including several Court fees and statutory lawyers' fees (*émoluments d'avocat*), is regulated by law. Generally, costs do not depend on the amount of the claim, except for a part of the statutory lawyers' fees. Additional lawyers' fees will generally depend upon the amount of work involved. At first instance and depending on numerous factors, the *émoluments d'avocats* amount to approximately €1,176 for a civil claim of €1 million and to approximately €99,985 for a civil claim of €100 million. If the claim is a commercial claim, the *émoluments d'avocats* will amount to approximately 25% of the amount due in civil claims.	Court fees depend on the amount of the claim. First instance Court fees of €1,836 accrue for a claim of up to €100,000 and amount to €3,715 for a claim of more than €100,000. Lawyers' fees will depend upon the amount of work involved. A claim for €1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion.

	Italy	Luxembourg	Netherlands
10. What might typical claims for €1 million, €10 million and €100 million cost to bring? (continued)		To a limited extent, and subject to the discretion of the Court, Luxembourg law also grants a procedural indemnity (*indemnité de procedure*) which includes proceedings costs that are not included in the *frais et dépens*. In general, the procedural indemnity is relatively low (rarely exceeding €5,000).	
11. If we fight and win this litigation, will we get our costs back?	Costs follow the event. In general, the judge orders the losing party to reimburse the opposing party for its expenses as well as lawyers' fees, the latter up to an amount which will be calculated by the judge at his/her discretion, but following statutory parameters and depending on the value of the case. The judge can further impose the costs on the losing side if there are serious and exceptional reasons, e.g. if the losing party acted in bad faith or is grossly negligent. In this case, the judge can even award further damages. The judge can also set off the expenses of both parties, but only (i) if both parties lose, (ii) if the matter in dispute has not been decided by Italian Courts before, or (iii) if the decision alters existing case-law.	In principle, each party bears its own costs. However, in recent case law and subject to certain requirements, Courts have awarded recovery of lawyers' fees as part of the damage incurred by the prevailing party. That said, it remains to be seen what the precise impact of these decisions will be. In general, the party which loses the case will be ordered to pay the (usually rather low) costs and a procedural indemnity (see above) to the other party.	The prevailing party can recover Court fees and (minimum) lawyers' fees. The lawyers' fees are generally recoverable only up to a "liquidation tariff", which in practice covers only a small part of the actual lawyers' fees. However, if a party caused costs without any justification, the Court may order this party to bear the opposing party's related costs even if that litigant prevails on the merits.
12. How long does a typical piece of litigation take, including appeals?	The duration of a case will depend on its complexity. The case might take between two and a half and three years to reach judgment, with an appeal adding another two years and with a recourse to the Supreme Court adding another year and a half.	The duration of a case will depend on its complexity and how many submissions and hearings are required. Luxembourg civil Court proceedings are dominated by written submissions. A typical case might take between nine months and two years, with an appeal adding another period of nine to 18 months.	The duration of a case will depend *inter alia* on the procedure followed and particular incidents, such as counterclaims, interlocutory decisions and/or the Court seeking expert advice. In general, a decision at first instance cannot be obtained in less than one year, with an appeal adding at least another year. Litigation before the Supreme Court usually takes between 14 and 18 months.

Italy, Luxembourg, Netherlands (continued)

	Italy	Luxembourg	Netherlands
12. How long does a typical piece of litigation take, including appeals? (continued)	At first instance, the judge, having considered the complexity of the case and having heard both parties, may decide the case by way of summary proceedings.	In summary proceedings the procedure is considerably quicker and a judgment is generally rendered within a few weeks.	Apart from preliminary injunction proceedings (see above), there is no possibility of applying for summary judgment.
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	No. However, the concept of standard disclosure is not as wide and well-developed as in common law jurisdictions. The Court, at the request of a party, may order the other party or a third party to produce documents or any other material that the Court considers to be necessary for the proceedings. The Court enjoys discretion in deciding whether or not to order document production and to determine the timing, place and method of production. However, the Court cannot order the production of documents covered by professional privilege (see below), or documents which, if shown, would cause serious damage. Such "serious damage" will be assessed on a case-by-case basis, but disclosure of trade secrets may suffice.	In general, each party has the right to decide individually which documents it will submit to the Court and to the adverse party (and hence will only submit the documents in its favour). A party in Court proceedings can also request the Court to order an adverse party or a third party to produce certain documents that are in its possession. Such a Court order is subject to certain conditions: (i) the requesting party must identify the document it requests; (ii) the requested document must be likely to exist; (iii) the adverse party or the third party is likely to be in possession of the document; and (iv) the document must be relevant for the outcome of the proceedings. However, obstacles of a material or legal nature (e.g. professionals' duty of confidentiality) may allow third parties to refuse the production of documents.	The Netherlands do not have the same broad disclosure process as the UK or US. There is no duty for parties to produce all documents relevant to the litigation. However, there is a limited discovery process. Under article 843a of the Dutch Code of Civil Procedure, a party can request from the opposing (or a third) party the production of specific documents. Such documents must be in the custody/control of the opposing party and must be relevant to the legal position of the applicant. Privileged documents (see below) do not need to be disclosed. The Enterprise Court, the chamber of the Amsterdam Court of Appeal with jurisdiction and special expertise in corporate disputes (e.g. in relation to anti-takeover measures), can order investigations into the affairs of a company if there are serious reasons to doubt the proper management of the company's affairs.

	Italy	Luxembourg	Netherlands
14. How is evidence obtained from witnesses for Court proceedings?	Witnesses are generally heard in Court. However, the Court is entitled, subject to the consent of both parties, to order a witness to provide a written statement. Witness examination before Italian Courts is mostly conducted by the judge, who may address, *ex officio* or on application, all questions deemed useful for clarifying the facts. Lawyers have the right to ask further questions.	Witnesses are generally heard in Court. Witness examination before Luxembourg Courts is conducted by judges and is recorded in the hearing minutes. The parties can propose questions to be asked by the Court. The parties can also submit witness statements drawn up by third parties in relation to the facts within their knowledge.	Witnesses are generally heard in Court. The most important statements are recorded in the hearing minutes that will be signed by the witness. Witness examination before Dutch Courts is mostly conducted by judges. Lawyers have the right to ask further questions. It is also possible to request provisional witness hearings (both for imminent and pending proceedings), thus enabling the requesting party to assess its chances in the lawsuit.
15. How wide is privilege in litigation?	The concept of legal privilege is not as wide and well-developed as in US or English law because document production obligations under Italian law are more restrictive than under discovery or disclosure proceedings. Legal privilege in Italy originates from a lawyer's duty to keep the client's affairs confidential. It is today a cornerstone of the rule of law (section 9 of the Code of Conduct of the Italian Bar Association). It is a lawyer's principal and fundamental duty, as well as his/her right, to maintain confidentiality. A lawyer has the statutory right and professional duty to remain silent if examined as a witness, both in civil and criminal proceedings.	Under Luxembourg law, the concept of legal privilege covers both information (relating to the client or a third party) received by the lawyer from his/her client as well as any document and communications emanating from the lawyer, both in his/her capacity as legal adviser and in his/her role of representing and assisting the client before Court. Legal privilege originates from a lawyer's statutory duty to keep the client's affairs confidential (subject only to very narrow exceptions) as set out *inter alia* in the law governing the profession of lawyer and the internal regulations of the Bar Association of Luxembourg (*règlement d'ordre intérieur*). The lawyer's duty of confidentiality is legally protected by the lawyer's right to remain silent if examined as a witness. This also entitles the lawyer to refuse the production of client-related documents in civil proceedings.	The concept of legal privilege is not as wide and well-developed as in US or English law because document production obligations under Dutch law are more restrictive. Legal privilege in the Netherlands originates from a lawyer's duty to keep the client's affairs confidential, based on conduct rules applicable to lawyers. There is no statutory provision that codifies the duty of secrecy, but it can be derived from a lawyer's right to remain silent if examined as a witness and to refuse production of documents in civil or regulatory proceedings. It is generally accepted in case law that a client or third party cannot be required to produce a document that is protected by the lawyer's duty of confidentiality as the principle of legal privilege would otherwise become illusory.

Italy, Luxembourg, Netherlands (continued)

	Italy	Luxembourg	Netherlands
15. How wide is privilege in litigation? (continued)	However, a lawyer is entitled to disclose confidential information if it is necessary (i) for effectively carrying out the representation of his/her client, (ii) for preventing his/her client from committing a particularly serious criminal offence, (iii) for proving facts in a dispute between the lawyer and his/her client, or (iv) in proceedings concerning the way in which the client's interests have been represented.	Communications exchanged between lawyers and their clients can neither be seised nor admitted as proof except if the content of the correspondence itself constitutes the offence.	
16. Do the same rules on privilege apply to regulatory investigations?	In regulatory investigations the rules of administrative proceedings or criminal proceedings apply. In broad terms, lawyers have the same duties as described under question no. 15, and client-related documents in their possession are usually protected from seisure by state authorities. However, the rules on professional privilege cannot be exploited by a client deliberately depositing documents at a lawyer's office. Documents in a client's organisation can usually be seised with no exception for lawyer work product.	Luxembourg law does not provide any provisions in this respect but leading scholars are of the view that the same rules on privilege as in civil proceedings apply to regulatory investigations. However, the exact powers of any regulatory authority should be assessed on a case-by-case basis. The administrative and disciplinary committee of the Luxembourg Bar Association has ruled that the transfer of confidential information to a regulatory authority is not justified by the fact that this authority is itself obliged to keep secret information received as a result of the exercise of its supervisory and investigative powers.	Yes. Regulatory bodies cannot compel the production of privileged material or seised documents.
17. Is advice from in-house lawyers privileged?	In principle, the Code of Conduct of the Italian Bar Association does not distinguish between in-house lawyers and external lawyers as to their duty of confidentiality.	Luxembourg law does not generally recognise the concept of an in-house lawyer. There is a legal incompatibility between employment (whether in the public or the private sector) and practice as a lawyer, except where the employment relationship exists within a law firm. Lawyers admitted to the Bar may therefore not be employed by any entity other than a law firm.	In the Netherlands, most internal lawyers are not admitted to the Netherlands Bar and therefore cannot invoke legal privilege. As an exception, internal lawyers may be able to invoke privilege for actions undertaken on the instructions of (admitted) external lawyers.

	Italy	Luxembourg	Netherlands
17. Is advice from in-house lawyers privileged? (continued)	However, advice from in-house lawyers is not privileged in EU competition investigations conducted by the Commission.	Moreover, as only (law firm) lawyers are entitled to provide legal advice, a company employee with a legal qualification cannot give legal advice covered by privilege. Such work would be considered as an internal document of the employer, which could be seised or requested.	However, advice from in-house lawyers is not privileged in EU competition investigations conducted by the Commission.
18. How can I preserve privilege when conducting an internal investigation?	Privilege in an internal investigation can be preserved through a special power of attorney, which indicates that the client authorises the lawyer to carry out an internal investigation on a specific matter.	In general, it is not possible to preserve privilege when conducting an internal investigation unless, in certain cases, the investigation is entrusted to an external lawyer.	The same rules as under question no. 16 apply.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	There is no need to appoint an agent prior to the lawsuit. As service will be significantly quicker and cheaper if an agent is appointed for a party which is not resident in Italy, it may be beneficial for one or more parties to the contract to agree on a service agent in Italy.	There is technically no need for a non-Luxembourg party to appoint an agent for service in Luxembourg prior to a lawsuit (during which the foreign parties will generally need to elect a domicile in the district of the competent Court). Service will be significantly quicker and cheaper if non-residents elect a domicile in Luxembourg for service. Hence it may be beneficial to agree in a contract to elect domicile for notifications of legal documents in Luxembourg.	There is no legal basis in Dutch law for the appointment of a process agent. In practice, however, lawyers of opposing parties sometimes agree that legal documents can be served at the lawyer's office. It is not common to agree this in contracts concluded between Dutch parties.

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Poland, Russia, Spain

	Poland	Russia	Spain
1. How long is the limitation (prescription) period?	The standard limitation period in commercial matters is three years from the date the claim became due. Contractual claims become due either on the date specified in the contract or on the creditor demanding payment. In most damages claims (contractual or tort) the limitation period commences once the creditor has knowledge of its claim and of the debtor. Other limitation periods might apply depending on the type of contract (e.g. two years for commercial sales contracts and 20 years for some tort claims) or cause of the action.	The standard limitation period is three years from the day a person becomes aware (or ought to have become aware) of the infringement of a right. According to the amendments that came into force on 1 September 2013, the limitation period cannot exceed 10 years from the date of infringement of the right. Other limitation periods might apply, depending on the cause of action.	The standard limitation period in commercial matters is 15 years from accrual of the cause of action. A cause of action in contract accrues on breach of contract, when the damage is suffered, or when the claimant should have known the facts giving rise to the claim. Other limitation periods might apply, depending on the cause of action, e.g. real estate claims have a shorter period.
2. Can I toll the limitation period?	Extending or shortening the limitation period by agreement is prohibited under Polish law. The limitation period is suspended by mediation, a debtor acknowledging a claim, and any judicial action undertaken to pursue or enforce a claim.	No. Agreements on suspension or extension of the limitation period are prohibited. However, if the parties to a dispute agree to follow an out-of-court dispute resolution procedure (e.g. mediation, intermediary, administrative procedure), the limitation period is suspended for the duration of that procedure, provided said duration is defined in law. In the event that there is no defined duration of the out-of-court dispute resolution procedure, the limitation period is suspended for a period of six months from the date that the procedure commenced. Further, the limitation period is interrupted when a debtor acknowledges a claim.	Yes. If there is a formal request by one of the parties or if there are negotiations, the limitation period is tolled by law.

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	Preservation of documents is important. If documents (including e-mails and other electronic items) to which a person does not have an exclusive right of disposal (e.g. documents concerning rights of other parties, sole copy of an agreement, etc.) are deliberately destroyed or hidden by that person, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Companies are obliged by law to preserve business-related documentation. The most important rules provide for a retention period of five years (e.g. accounting documentation/tax documentation, *dokumentacja rachunkowa/dokumentacja podatkowa*) or 50 years (e.g. employee documentation such as payrolls or payslips, *lista płac*, *karta wynagrodzeń*). Polish Courts rarely order the submission of documents. However, the fact that a document contains trade secrets is not a sufficient reason to refuse disclosure.	Preservation of documents may be important. If documents, including e-mails and other electronic files, are deliberately destroyed when proceedings are imminent, Russian Courts might qualify the refusal to disclose information during proceedings as recognition of a fact on which the adverse party relies. Companies are also obliged by law to preserve certain categories of documents (e.g. they must keep accounting documents for at least five years). However, it is unusual for Russian Courts to order the submission of documents. This applies especially if documents are not specifically identified.	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Companies are obliged by law to preserve all business-related documentation. The most important rules provide for a retention period of six years. However, it is unusual for Spanish Courts to order the submission of documents. This applies especially if documents are not specifically identified or if trade secrets are involved. When trade or corporate secrets are not an issue, there is a possibility of providing redacted copies of documents.

	Poland	Russia	Spain
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Polish Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Polish Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Poland, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in Poland, however, the Polish Courts would be likely to proceed with the matter. The recognition of a foreign judgment in Poland depends on a number of conditions, the most important being the principle of "public order"	Russian state commercial (*Arbitrazh*) Courts must leave claims unconsidered (i.e. dismiss the case without prejudice) if a foreign Court is seised of the same dispute between the same parties and the Russian Courts do not have exclusive jurisdiction over the dispute. Russian Courts are also entitled to suspend Court proceedings if a foreign Court is seised of a case which might impact the Russian case. Russian law does not stipulate that the actions described above are only possible if the foreign proceedings are initiated before the Russian proceedings. Hence it is possible that a Russian Court may leave a claim unconsidered/suspend proceedings even if a foreign Court is seised after the Russian Court is seised. Russian proceedings are deemed to be initiated when the Russian Court issues a ruling on the initiation of the proceedings.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the Spanish Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the Spanish Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in Spain, and if the stay is necessary for the proper administration of justice. If the foreign judgment would not be recognised in Spain, however, the Spanish Courts would be likely to proceed with the matter. The recognition of a foreign judgment in Spain depends on bilateral treaties, and on the principle of "reciprocity" (i.e. whether or not Spanish judgments would generally

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
4. Is it important for the Court to be first seised and, if so, when is the Court seised? (continued)	(i.e. whether the recognition of the foreign judgement would be contrary to the basic principles of Polish legal order). A Polish Court is seised when the statement of claim is served on the defendant. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.		be recognised in the respective foreign state). A Spanish Court is seised when the statement of claim is filed with the Court if it is later admitted. This applies in relation to other Spanish Courts as well as in an EU context.
5. Are there any steps I need to take before commencing proceedings?	Normally, no steps have to be taken before commencing Court proceedings, but a Court fee retainer is generally due before filing a claim.	Normally, no steps need to be taken before commencing Court proceedings, but a Court fee retainer is due in advance of the initiation of proceedings in Russia. By law or agreement the parties can be required to take certain pre-trial steps (e.g. sending a letter of demand or initiating mediation). Failure to do so can result in a case being dismissed without prejudice.	A Court representative needs to be hired and a Court fee retainer is due before filing the claim.
6. Is there any interim relief that might improve my position?	The principal relief that might be available is a preliminary Court order to freeze the debtor's assets, to preserve the status quo or to prohibit the disposal of certain assets. For an interim injunction the applicant has to substantiate the claim and show a legal interest in obtaining the injunction. This means that a Court can grant an interim injunction if the claimant has a good arguable case on its own merits and if there is a risk that the lack of an interim injunction will render enforcement of the subsequent judgment impossible or significantly hamper it (e.g. if there is a real risk that the defendant will dispose of its assets). This might require "unusual conduct" on the part of the defendant; carrying out transactions in the ordinary course of business will not suffice;	The principal relief that may be available is a (preliminary) Court order to freeze the debtor's assets (including funds in a bank account) (*nalozhenie aresta*) or barring the defendant or other persons from taking certain actions (e.g. from disposing of certain assets) (*zapreschenie sovershat' opredelennye deistviya*). More than one measure can be granted concurrently. A separate set of interim measures is available for "corporate disputes", i.e. disputes connected with the establishment or management of, or participation in, a legal entity (e.g. interim measures such as a prohibition against adopting or implementing certain corporate decisions).	The principal relief that might be available is a preliminary Court order to freeze the debtor's assets, to preserve a certain status quo or to prohibit the disposal of a certain asset (*medida cautelar*). If, e.g. you are in a dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. Three conditions for the interim order have to be met: (i) the appearance of having, *prima facie*, grounds for the claim (*fumus boni iuris*); (ii) a danger in a delayed response (*periculum in mora*); and (iii) the requesting party having to pay an amount set by the Court that will be frozen as a guarantee of possible damages caused by the measure. The Court decides by way of summary judgment.

	Poland	Russia	Spain
6. Is there any interim relief that might improve my position? (continued)	however, the threat of insolvency may suffice. Interim injunctions can be granted either in support of proceedings in Poland or in support of proceedings elsewhere, but in the latter case there must be a real connecting link between the subject matter of the measures sought and Poland (i.e. the injunction may be enforced in Poland or have its effects in Poland). Polish Courts may grant an interim injunction *ex parte* if an applicant lodges an application for an interim injunction before the commencement of proceedings. In such a case, the statement of claim must be lodged within the term specified by the Court (maximum two weeks). Anti-suit injunctions are not generally known in the Polish legal system but it is possible to apply for injunctions having a similar effect. An interim injunction may, e.g. suspend certain types of pending proceedings (e.g. registration proceedings). The Polish Code of Civil Procedure grants the defendant a damages claim in the event that the injunction proves to be unjustified and harmful.	Injunctive relief is granted if failure to do so may obstruct or render impossible enforcement of the decision or may result in substantial damage to the applicant. When considering applications for injunctive relief, the Courts assess whether the specific measure sought by the applicant is connected with (and is adequate for) the claim and will help facilitate enforcement of the judgment or the prevention of damage. The threat of insolvency will not suffice. Interim relief is available in support of both Russian and foreign Court proceedings. To secure interim relief it may be necessary to provide counter-security, i.e. to transfer funds to a deposit account of the Court or provide a bank guarantee in order to provide compensation for any losses the injunction may cause the defendant in the event that it proves to be unjustified (usually because the claimant loses the case). Russian Courts grant interim relief *ex parte*, but they do not grant anti-suit injunctions. Should the injunction prove to be unjustified and harmful, the defendant may file a damages claim.	This means that a Court can grant a freezing injunction if the claimant has a good arguable case on its own merits and if the matter is "urgent", e.g. if there is, according to the Court's particular view on a case-by-case basis, a real risk that the defendant will dispose of its assets with the result that they are not available if judgment is given against it. The judge will make a preliminary analysis of the merits of the case without prejudging a final decision. Freezing orders can be granted either in support of proceedings in Spain or in support of proceedings elsewhere, but in the latter case there must be a real connecting link between the subject matter of the measures sought and Spain (e.g. the injunction must be directed to assets in Spain). It is also possible to request injunction measures *ex parte*, but it will be necessary to prove the need for such extraordinary measures. Spanish Courts do not grant anti-suit injunctions. If the claim is finally rejected after injunction measures have been granted, the defendant can claim for damages not limited to the amount frozen.

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
7. What judges or other persons will hear my case?	In the first instance, the case will usually be heard by a single judge and, on appeal, by three judges. The judges in a commercial dispute are not required to have (and usually do not have) special experience of commercial matters. Judges in Poland have passed a state examination and have received at least five years of judicial training. Cases will always be decided by judges; there are no jury trials in Poland.	In the first instance, cases are heard by a single judge. Certain types of disputes are heard by three judges (e.g. bankruptcy cases and certain types of IP disputes). In specific commercial matters and upon a party's request, a single judge is assisted by two *Arbitrazh* Court Assessors with a commercial background. Appeals are normally heard by three judges. At the Supreme Court, cases under supervisory review are usually heard by at least seven judges. Judges in Russia must have a degree in law and 5-15 years (depending on the level of the Court) of practical experience in the legal sphere. There are no jury trials for commercial disputes in Russia.	In the first instance, the case will be heard by a single judge and, on appeal, by three judges. The judges are professional lawyers who have passed an official public examination to become judges. There are no jury trials for civil matters in Spain.
8. Is there usually an appeal?	Yes. Any judgment of a Court of first instance on the merits of a case is subject to an appeal. The appeal may concern both the law and the facts.	Normally an appeal can be brought by any party without the permission of the Court. *Arbitrazh* Appellate Courts can reassess the facts established by the Court of first instance (in particular, establish facts that have wrongfully been ignored by the Court of first instance). Cassation Courts and the Supreme Court cannot establish new facts.	Normally, an appeal can be brought by any party without the permission of the Court. The appeal can revisit all the merits of the case, whether fact or law. New evidence can only be brought to the appeal in restricted circumstances.

	Poland	Russia	Spain
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	Significant civil matters are heard in the first instance by a regional Court (*Sąd Okręgowy*). Appeals from the *Sąd Okręgowy* go to the Court of Appeal (*Sąd Apelacyjny*). Parties can represent themselves in the proceedings if they wish to do so, but generally the parties appoint a lawyer admitted in Poland (either an advocate or a legal adviser). A cassation appeal restricted to points of law (*Skarga Kasacyjna*) may be filed against most final judgments delivered by the appellate Courts. Cassation appeals are decided by the Supreme Court (*Sąd Najwyższy*), which has discretion whether or not to hear such an appeal. With limited exceptions, a cassation appeal must be prepared by a lawyer admitted in Poland.	In general, there are four stages to appeal a judicial decision rendered by state commercial (*Arbitrazh*) Courts, which hear the majority of commercial disputes: ■ appeals in the *Arbitrazh* Appellate Court; ■ appeals in the Cassation Court; ■ second cassation appeal before the Commercial Disputes Bench of the Supreme Court; ■ supervisory review by the Presidium of the Supreme Court. In general civil matters, there are no specific requirements applicable to legal representatives. It is not necessary to instruct an advocate (a member of the Bar).	Civil matters are heard by a district Court (*Juzgado de Primera Instancia*) in the first instance. Parties will generally have to hire a lawyer as Court representative. An appeal in civil matters is heard by the provincial Court (*Audiencia Provincial*). A Court representative in the relevant jurisdiction must be hired. The lawyer, in the first instance, needs to be a lawyer admitted to one of the Spanish Bars. A further appeal, restricted to points of law (*Casación*) or to breaches of procedural law (*infracción procesal*), may be filed against final judgments delivered by the appellate Court. It is heard by the Supreme Court of Justice (*Tribunal Supremo*) and a Court representative in Madrid needs to be instructed.
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	The general rule is that in property cases (i.e. a case where the Court's decision directly influences the claimant's assets) Court fees depend on the amount of the claim and are equal to 5% of the value of the claim. The maximum fee is capped at PLN100,000 (approximately €25,000). In some cases, Court fees are fixed and do not exceed PLN5,000 (approximately €1,250).	Court fees depend on the amount of the claim. However, if the amount of the claim exceeds RUB2,000,000 (approx. €26,000), the amount of the *Arbitrazh* Court fee is capped at RUB200,000 (approx. €2,600). There is no binding lawyers' fee tariff for commercial disputes. Legal fees can be based on hourly rates or can be task-based.	Court fees depend on the amount of the claim, with a maximum of €10,300. First instance Court fees of €5,300 accrue for a claim of €1 million. A claim of over €3 million would trigger the maximum fee.

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
10. What might typical claims for €1 million, €10 million and €100 million cost to bring? (continued)	The statutory (i.e. minimum) lawyers' fees depend on the value of the claim, but do not exceed PLN7,200 (approximately €1,800). In commercial matters, it is customary for lawyers to be paid on a time-fee basis. In such cases, lawyers' fees will depend on the amount of work involved.		Statutory (i.e. minimum) lawyers' fees depend on the amount of the claim and the place where the proceedings take place as each Bar in Spain determines the lawyers' fees at its own discretion. For instance, in Madrid, statutory lawyers' fees of €59,640 accrue for a €1 million claim. For claims over €2,700,000, the Bar has established a minimum of €88,390 and foresees even higher fees depending on the amount of work involved. However, statutory (i.e. minimum) lawyers' fees are only relevant if costs are awarded by the Court. Between client and lawyer, there are no compulsory maximum or minimum fees. Lawyers' remuneration typically depends on the amount of work involved.
11. If we fight and win this litigation, will we get our costs back?	Costs follow the event. The prevailing party can usually recover Court costs and the statutory (i.e. minimum) lawyers' fees, but not time-based fees exceeding the statutory amount. The Court may award up to six times the statutory lawyers' fees (maximum PLN43,200 (approximately €10,800)), but such decisions are rare. However, there are some exceptions to the general rule. For instance, the defendant may recover in full the Court costs and the statutory (i.e. minimum) lawyers' fees despite losing the case if it did not give reason for the proceedings to be instituted or partially if the claimant's claim is partially dismissed.	Costs follow the event. The prevailing party can usually recover Court costs and reasonable lawyers' fees. The recoverable level of lawyers' fees is generally very low because Russian Courts often regard lawyers' fees which are customary in international business transactions as being "uncustomary" in Russia. However, this practice is beginning to change: recently, there have been several cases where substantial fees have been awarded. If a claim is partially successful, the expenses are paid on a pro rata basis. Irrespective of the outcome of a dispute, the Court is entitled to impose costs on a party that has abused its procedural rights causing unnecessary delay and/or which otherwise abuses the process.	Costs follow the event. The successful party can usually recover Court costs and statutory (i.e. minimum) lawyers' fees, but not time fees exceeding the statutory amount.

	Poland	Russia	Spain
12. How long does a typical piece of litigation take, including appeals?	The duration of a case will depend on its complexity and how many submissions and hearings are required. Polish civil Court proceedings are dominated by written submissions, despite the recent amendment to the Polish Code of Civil Procedure, which limits to a certain extent the parties' right to submit written pleadings without the Court's consent. A typical case might take between one year and three years to reach judgment, with an appeal adding another six months to one year. There are procedural options to accelerate proceedings, e.g. by applying for a payment order (*nakaz zapłaty*) on the basis of specified documents, in order to receive a "quick" and preliminarily enforceable judgment. In this event, however, the opponent can challenge the payment order by filing objections within two weeks. This will initiate subsequent proceedings which are generally restricted to the issues raised and evidence filed in the statement of claim and objections.	The duration of a case will depend on its complexity and how many submissions and hearings are required. A typical case might take from three to six months to reach judgment, with an appeal and cassation appeal adding a further six to nine months. If the case is then referred to the Supreme Court for the second cassation appeal, it may take another three to five months. Supervisory review by the Supreme Court may add another five to nine months to the timeline. Given that the Cassation Courts and the Supreme Court (both at the level of the Commercial Disputes Bench and the Presidium) can refer cases back to a lower Court for consideration in new proceedings, litigation can in fact take much longer. If the case can be disposed of through summary judgment (upon request of the claimant and subject to the defendant's consent, primarily in respect of claims for relatively small amounts of money), it will be considerably quicker – generally about one month.	The duration of a case will depend on the place where the Court is located, the Court itself and on its complexity. A typical case might take between nine months and one-and-a-half years to reach judgment in Madrid or Barcelona, with an appeal adding another one to two years. If none of the parties requests the appearance of witnesses, the Court can decide to apply summary documentary proceedings.

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	The concept of documentary disclosure is historically very limited in Poland. The Court may direct one of the parties or a third party to produce records or documents, as well as any other material in its possession, to which one of the parties has made reference. Although this concept appears to be rather wide, the Courts generally interpret it very narrowly. The Courts usually require conclusive submissions (as to the relevance of the documents for the outcome of the lawsuit) and a specific description of the document requested.	Each party must provide the other parties to the proceedings with copies of documents and other evidence that are submitted to the case files. Therefore, a party generally only discloses documents that are helpful to its case. Russian *Arbitrazh* Courts can direct one of the parties or a third party to produce specific documents. This type of disclosure is usually only ordered upon a party's application to the Court, but applications are seldom made. The Courts require a document to be relevant to the outcome of the lawsuit and to be specifically identified as well as for the requesting party to be unable to obtain the requested documents without the Court order. Failure to comply with a request can result in a fine being imposed and negative inferences being drawn. At the Court's request, confidential information must be disclosed, even if it is protected by law, e.g. by banking secrecy or commercial secrecy. If a party wishes to preserve the secrecy of certain information in the course of proceedings, it may apply to Court requesting that proceedings be held *in camera*. In such cases, observers will not be permitted to the Court sessions.	The concept of documentary disclosure is historically very limited in Spain. One of the parties might request the other party or third parties to produce records or documents, as well as any other material in its possession, to which one of the parties has made reference. Although this concept appears to be rather wide, the Courts generally interpret it very narrowly. The Courts usually require the document to be relevant to the outcome of the lawsuit and to be specifically identified. This applies especially if documents are sought from third parties.
14. How is evidence obtained from witnesses for Court proceedings?	Witnesses are heard in Court. Polish civil procedure does not allow submission of written witness statements. The witness is examined first by the judge (which happens rarely), then by the party which applied for examination of the witness, and finally the counterparty is entitled to cross-examine the witness.	Witness evidence is seldom heard in Russian *Arbitrazh* Courts. If requested by the Court, witnesses must set out their oral testimony in writing. The examination is mostly conducted by the judge. Lawyers have the right to ask further questions.	Witnesses are generally heard in Court. All hearings are videoed, and only in limited cases is there a possibility of a written witness statement. Witness examination before Spanish Courts is conducted by lawyers. Judges might ask further questions, although this is highly uncommon.

	Poland	Russia	Spain
15. How wide is privilege in litigation?	The concept of legal privilege is not as wide and well-developed as in US or English law because document production obligations under Polish law are more restrictive. Legal privilege in Poland originates from a lawyer's duty to keep the client's affairs confidential. The lawyer's (an advocate's or a legal adviser's) duty of confidentiality is legally protected by the lawyer's right to remain silent if examined as a witness. This also entitles the lawyer to refuse the production of client-related documents in civil proceedings. Although it is unclear under Polish law, it is arguable that a party cannot be ordered to produce lawyer work product in its possession because of the confidential nature of its relationship with its lawyer.	Generally speaking, there is no concept of privilege in Russian law. However, Russian law provides for a special protection regime with respect to so-called "advocate secrecy". Advocates (members of the Bar) cannot be requested to produce information and documents relating to their clients' affairs. Not all lawyers representing clients in Russian *Arbitrazh* Courts are advocates. However, advocate secrecy does not apply to clients of advocates, who may be requested to produce the relevant documents and information and any advice obtained from the advocate.	The concept of legal privilege is not as wide and well-developed as in US or English law because document production obligations under Spanish law are more restrictive. Legal privilege in Spain originates from a lawyer's duty to keep the client's affairs confidential and from a client's privacy rights. This regulation originates from the rules of the Spanish Bar rather than directly from procedural law. If a lawyer is examined as a witness, he has the duty to inform the Court if certain parts of his/her deposition would fall under the professional secrecy obligation. However, the Court may order the lawyer to disclose such information. Moreover, client-related documents can be requested and used in Court, as long as they have not been particularly prepared for the defence of the client after the initiation of the proceedings. A related area is without prejudice communications with the other side. In most instances, communications with the other side (e.g. admissions or other concessions) in the course of genuine negotiations seeking to settle actual or contemplated litigation are not allowed before the Court. Nevertheless, being a rule arising from the Spanish Bar it is possible that a Court might overrule it and allow such evidence.

Poland, Russia, Spain (continued)

	Poland	Russia	Spain
16. Do the same rules on privilege apply to regulatory investigations?	No. In regulatory investigations the rules of administrative proceedings or criminal proceedings usually apply. External lawyers are still obliged/entitled to assert confidentiality, and client-related documents in their possession are usually protected from seisure by investigative bodies. However, in some cases a Court may override privilege in order to allow authorities access to documents.	Yes. Regulatory bodies cannot compel the production of privileged material under "advocate secrecy".	No. In regulatory investigations the rules of administrative proceedings or criminal proceedings apply. An external lawyer is still obliged/entitled to confidentiality, and client-related documents in his/her possession are usually protected from seisure by state authorities. This rule may not apply to client documents that have been deliberately deposited at the law firm's office or if the lawyer has a manifest interest in the subject matter of the investigation. Unlike in civil proceedings, documents in a client's organisation can usually be seised with no exceptions for lawyer work product.
17. Is advice from in-house lawyers privileged?	Under Polish law there is no distinction between in-house lawyers and external lawyers as to their duty of confidentiality. However, advice from in-house lawyers is not privileged in EU competition investigations conducted by the Commission.	No. Documents written by an in-house lawyer (domestic or foreign) are not privileged and must be disclosed at the request of Russian authorities.	In principle, there is no distinction between in-house lawyers and external lawyers as to their duty of confidentiality. However, advice from in-house lawyers is not privileged in EU competition investigations led by the Commission.

	Poland	Russia	Spain
18. How can I preserve privilege when conducting an internal investigation?	In order to be privileged, the investigation should be led by a lawyer (an advocate or a legal adviser) and must comprise confidential legal advice.	You can engage an advocate (a member of the Bar) in order to enjoy the regime of "advocate secrecy" (see question no. 15 and 16).	The same rules as under question no. 16 apply.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	A party that is not domiciled or residing in an EU country and is not represented by a Polish-based attorney-in-fact in the proceedings is obliged to appoint an agent for service in Poland. If an agent for service is not appointed, all submissions (with the exception of the statement of claim) will be left in the case files and will be deemed served. The appointment of an agent for service before commencement of litigation may not be effective in Poland, as the Court is in any event obliged to deliver the statement of claim to the non-Polish party and inform it about the consequences of not appointing an agent for service in Poland.	Generally, Russian Courts send notifications to the registered addresses of the parties to a dispute. This cannot be avoided by the appointment of a service agent. However, if a foreign person (whether a company or an individual) has a representative in Russia who is entitled to represent that person in Court, the Court may notify such foreign person at the address of the representative. Further, once proceedings have been initiated, a party can indicate an address (including a service agent's address) where the Court is to send all notifications.	There is an obligation to hire a Court representative (*Procurador de los Tribunales*) to represent the client before the Court, once proceedings are initiated. There is no need to appoint a service agent (e.g. in a contract) prior to particular proceedings. Such Court representative needs to be empowered, including the power to reach agreements and to settle disputes. In insolvency proceedings other powers might be necessary.

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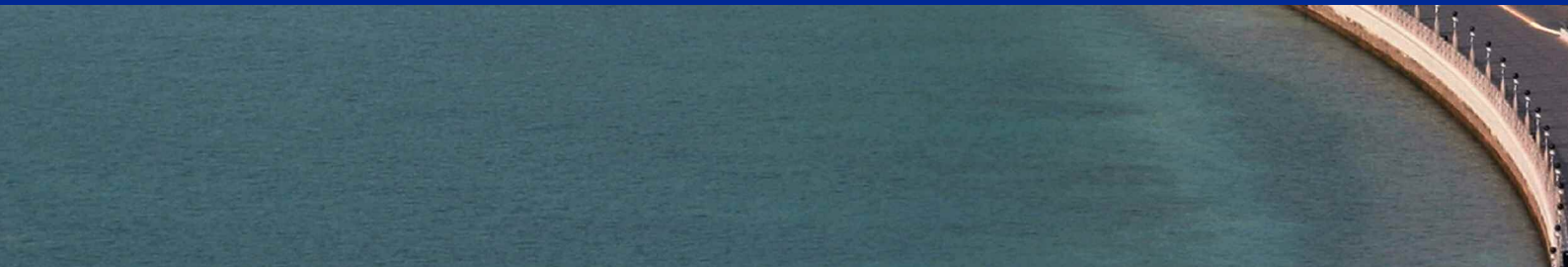
Middle East



Middle East

	UAE (including DIFC)
1. How long is the limitation (prescription) period?	Under UAE law, the limitation period for contractual disputes is usually 15 years from the date of the cause of action; however, there are a number of exceptions. The most common are set out below. The time limit for tort claims, insurance disputes and claims relating to cheques is three years. The limitation period for claims in relation to defects in buildings is 10 years. A cause of action in contract accrues on a breach of contract and, in tort, when the harmed party becomes aware of the damage it has suffered. Under the DIFC (a freezone in Dubai with its own Court and civil law) law, the standard limitation period is six years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract; in most torts, a cause of action accrues when damage is suffered.
2. Can I toll the limitation period?	Under UAE law, limitation periods may be varied in certain circumstances; however, this depends on the construction of the specific statute providing for the limitation period. A time extension agreed by the parties may be permitted. Under DIFC law, parties may reduce the period of limitation for contractual disputes to not less than one year but may not extend it beyond six years. In relation to extensions in general, particularly when a dispute has arisen, the DIFC Court can be expected to follow the approach under English law.
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	The UAE Courts (and Court appointed experts) place considerable emphasis on documentary evidence. While there is no general obligation to preserve documents, if a party fails to produce documents that it should have in its possession, that party is likely to be treated unfavourably by a Court appointed expert. Parties should ensure that they preserve as much documentary evidence as possible, particularly hard copy originals. All documents submitted to the UAE Courts will also need to be translated into Arabic. In DIFC Court litigation, preservation of documents is important. The Court can be expected to take the same approach as in England and Wales.
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	No, a UAE Court is likely to accept jurisdiction where it has competence – regardless of whether foreign proceedings have already been commenced. There is no concept of an anti-suit injunction in the UAE. The DIFC Courts can be expected to take into account a range of factors when considering whether to accept jurisdiction. The fact that other proceedings have been commenced in Courts outside of the UAE may be a factor the Court will take into account in exercising its discretion as to whether to proceed. Similar to the English Courts, the DIFC Courts may grant an anti-suit injunction to restrain proceedings taken in a Court outside the DIFC. This may happen if, e.g. proceedings have been brought in breach of an exclusive jurisdiction clause.
5. Are there any steps I need to take before commencing proceedings?	In the UAE Courts, generally no (though all relevant documents will need to be translated into Arabic). In the absence of a specific rule, the DIFC Courts are required to adopt the rules of practice and procedure specified in the English Admiralty and Commercial Courts Guide (the "Guide"). Whilst we have not seen this applied in practice, the Guide requires compliance with the Practice Direction on Pre-Action Conduct and any approved pre-action protocols that apply in the United Kingdom. The Practice Direction and any approved pre-action protocols should therefore be considered before commencing proceedings in the DIFC Courts.
6. Is there any interim relief that might improve my position?	The UAE Courts are able to make interim attachment orders over specific assets to secure a claimant's claim. Upon obtaining an attachment it is necessary to commence substantive proceedings within eight days (if not already commenced) or the attachment will be lifted. The UAE Courts may also appoint a factual expert to assess certain factual circumstances. This type of relief will not result in a determination of rights – the proceedings end with the production of the expert report, which may then have persuasive value in subsequent substantive proceedings.

Middle East (continued)

	UAE (including DIFC)
6. Is there any interim relief that might improve my position? (continued)	The DIFC Courts can issue a similar range of interim relief to that of the English Courts (see the section on United Kingdom). Interim orders issued by the DIFC Courts should be enforceable "onshore" in Dubai and possibly in the other emirates of the UAE (although caution should be exercised with respect to enforcement outside Dubai in the wider UAE).
7. What judges or other persons will hear my case?	Cases in the UAE Courts will be heard by civil law trained judges from around the Middle East and Africa, including Egypt, Jordan and Sudan. In addition, UAE Courts frequently appoint an expert (from the Court's roll) to assess the case and prepare a report. The expert may have limited expertise in the subject matter of the case, but the factual conclusions contained in expert reports are highly persuasive and rarely deviated from, particularly at Court of First Instance level. Cases in the DIFC Courts are likely to be heard by common law qualified judges from England, Singapore and Australia. A number of UAE nationals also appear as judges.
8. Is there usually an appeal?	There are automatic rights of appeal from the UAE Court of First Instance to the Court of Appeal and then to the Court of Cassation. The Court of Appeal will consider and rule on both issues of fact and law. The jurisdiction of the Court of Cassation is limited to points of law only. Except for limited circumstances, there is no automatic right of appeal from the DIFC Court of First Instance to the DIFC Court of Appeal. Permission will only be granted if the appeal has a real prospect of success or, in unusual cases, if there is some other compelling reason. Appeals are generally on matters of law only.
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	All cases before the UAE Courts begin in the Court of First Instance. Decisions of the Court of First Instance may then be appealed to the Court of Appeal and then subsequently to the Court of Cassation. Local counsel with rights of audience will need to be instructed. DIFC cases above a value of US$135,000 will be heard by the DIFC Court of First Instance and then, if permission to appeal is granted, by the DIFC Court of Appeal. Lawyers registered with the DIFC Court, and with sufficient advocacy experience, can appear before the DIFC Court as advocates.
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	The cost of litigation will vary significantly depending on the nature of the dispute. Some Court fees vary with the amount of the claim but overall costs are relatively low (filing fees of no more than US$8,000 in the UAE Courts and US$20,000 in the DIFC Courts). Lawyers' fees in the UAE Courts are generally relatively low compared to international standards. This reflects the lower level of judicial scrutiny, even in complex cases. In the DIFC Courts, lawyers' fees will depend upon the amount of work involved. A claim for US$1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for US$1 billion.
11. If we fight and win this litigation, will we get our costs back?	No, the UAE Courts make costs awards of only nominal sums (i.e. less than US$500) in favour of the successful party. In the DIFC Courts, you will generally recover a proportion of your costs, typically between half and two-thirds of the actual costs provided that the costs are not disproportionate to the amounts at stake. Correspondingly, if you lose the case, you will ordinarily be ordered to pay the other side's costs. Costs recovery might, however, be reduced if you have lost on some of the issues before the Court even though you have won overall and, particularly, if a claimant has refused a settlement offer from the other side that was higher than the amount awarded in the judgment.
12. How long does a typical piece of litigation take, including appeals?	Cases in the UAE Courts can be expected to take around two years (but possibly more). This timeframe takes into account appeals to the Court of Appeal and Court of Cassation. Time estimates for the DIFC Courts will vary depending on the level of complexity involved and whether jurisdiction is disputed. Cases can be expected to last at least a year and may stretch to two or three years. If the case can be disposed of through, e.g. summary judgment (i.e. an application early in the proceedings for judgment on the basis that the other party has no reasonable prospect of success), it may be considerably quicker.

	UAE (including DIFC)
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	There is no automatic process of document discovery and disclosure in the UAE Courts. However, a party may request documents from its opponent if they are closely related to the relationship between the parties. In practice, such requests are rare. It is more likely that a Court appointed expert will request documentation from both of the parties. A negative inference may be drawn by the expert if documents are not produced. In the DIFC Courts, disclosure and discovery are integral parts of the Court process. However, the scope is narrower than in the English Courts. During standard disclosure, parties are only required to produce the documents (including electronic documents) upon which they rely rather than documents which would harm their case (i.e all documents which are material and relevant to the dispute). Following standard disclosure, both parties can make specific requests to produce documents (including electronic documents). Documents requested will generally need to be relevant and material to the case.
14. How is evidence obtained from witnesses for Court proceedings?	While it is possible to apply to file a witness statement and for a witness to be called to give evidence, in practice this is very rare. A UAE Court will instead decide a case based on the report of a Court appointed expert and the documentary evidence before it. A DIFC Court, by contrast, relies heavily on witness evidence in the same way the English Courts would. Written witness statements are usually prepared, with witnesses being required to give oral evidence at trial followed by detailed cross-examination by the lawyer acting for the other party. Cross-examination can be lengthy and hostile.
15. How wide is privilege in litigation?	Privilege is not recognised by the UAE Courts. Although remote, there is a risk that documentation which would be considered privileged from a common law perspective may end up being produced before the UAE Courts. The approach to privilege in the DIFC Courts can be expected to follow the approach in England and Wales.
16. Do the same rules on privilege apply to regulatory investigations?	No, regulators in both the UAE and DIFC can require the disclosure of privileged communications. In practice, the UAE Central Bank may obtain documents through a police search.
17. Is advice from in-house lawyers privileged?	As set out above, the concept of privilege is not recognised by the UAE Courts. The DIFC Courts can be expected to follow the approach in England and Wales.
18. How can I preserve privilege when conducting an internal investigation?	As set out above, the concept of privilege is not recognised by the UAE Courts. The DIFC Courts can be expected to follow the approach in England and Wales.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	Service by a contractually agreed method or by the appointment of a process agent is not recognised by the UAE Courts. In practice, the UAE Courts are unlikely to be involved where a party does not have a presence in the UAE. Where a party does have a presence in the UAE, service is effected by the Court bailiff. In the DIFC Courts, service of process outside the DIFC and Dubai may be made by any method permitted by the law of the jurisdiction in which the document is to be served. However, in practice, this is likely to introduce significant delay in many jurisdictions, including other emirates of the UAE. Therefore, it is advisable to appoint a process agent in Dubai or the DIFC where one or more parties are located outside Dubai.

Middle East

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United Kingdom and United States of America

United Kingdom and United States of America

	United Kingdom	United States of America
1. How long is the limitation (prescription) period?	The standard limitation period is six years from accrual of the cause of action. A cause of action in contract accrues on breach of the contract; in most torts, a cause of action accrues when damage is suffered. There are exceptional limitation periods for certain causes of action, e.g. if the claim is on a deed or for the recovery of land, the limitation period is 12 years, while the period for personal injury claims is three years (though this can be extended). Where an action is based on fraud or a mistake, the limitation period does not start to run until the fraud or mistake was discovered or could with reasonable diligence have been discovered.	Limitation periods vary considerably from state to state. Federal limitation periods are governed by the statutes giving rise to the particular claims. In New York State, limitation periods typically range between two and six years. The standard limitation period is six years from accrual of the cause of action, which usually occurs in contract claims at the time of breach and in tort claims at the time when damage is suffered. Other (usually shorter) limitation periods apply to some other causes of action; e.g. the period for personal injury claims is three years.
2. Can I toll the limitation period?	Yes. Parties can agree to stop time running for limitation purposes if they wish. The time limit is also automatically extended if parties to a cross-border dispute are conducting a mediation when the limitation period would otherwise have ended.	Parties generally can agree to toll the limitation period for a fixed period of time. In some cases, statutes of repose exist for particular claims that cannot be tolled, such that once a specified period elapses after the triggering event, no suit may be brought.
3. I fear that litigation is likely. Is there anything I need to do now, such as preserving documents?	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even if that is not the case, destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Avoiding the routine or other destruction of documents can be particularly important with electronic documents. Steps need to be taken to ensure that, e.g. relevant e-mails are not deleted periodically under standard procedures aimed at saving storage space. Similarly, anyone who may have relevant documents on the hard drive of a computer or text messages on a mobile phone should not delete those documents. This may entail both speaking to those likely to have relevant documents and also checking IT architecture to see where, when and how documents are stored.	Preservation of documents is important. If documents (including e-mails and other electronic items) are deliberately destroyed when proceedings are imminent, it could constitute a criminal offence. Even inadvertent destruction of a relevant document can lead to a case being dismissed or to the Court drawing adverse inferences from the absence of documents. Avoiding the routine or other destruction of documents can be particularly important with electronic documents. Steps need to be taken to ensure that, e.g. relevant e-mails are not deleted periodically under standard procedures aimed at saving storage space. Similarly, anyone who may have relevant documents on the hard drive of a computer or text messages on a mobile phone should not delete those documents. This may require both speaking to those likely to have relevant documents and also checking IT architecture to see where, when and how documents are stored.

United Kingdom and United States of America (continued)

	United Kingdom	United States of America
4. Is it important for the Court to be first seised and, if so, when is the Court seised?	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. This is particularly so in an EU context. If a Court in the EU is seised of a case, any EU Court seised subsequently must stay its proceedings unless and until the Court first seised has decided that it does not have jurisdiction. However, this does not apply if the Court subsequently seised has jurisdiction under an exclusive jurisdiction agreement. Under the recast Brussels I Regulation, which applies for proceedings initiated on or after 10 January 2015, all EU Courts seised of a case have to stay the proceedings until the EU Court subsequently seised upon which exclusive jurisdiction was conferred has decided whether it has jurisdiction. If a Court outside the EU is seised of a case, the English Court subsequently seised has discretion to stay its proceedings in accordance with the recast Brussels I Regulation. According to the new regime, the English Court may stay the proceedings only if the non-EU Court's decision would be recognised (and enforceable) in England, and if the stay is necessary for the proper administration of justice. The English Court may grant an anti-suit injunction to restrain proceedings taken in a Court outside the EU. This may happen if, e.g., proceedings have been brought in breach of an exclusive jurisdiction clause. An English Court is seised when the claim form is issued by the Court. In an EU context, Article 32 of the recast Brussels I Regulation provides for a separate regime regarding *lis pendens* which slightly differs from the domestic rules.	If you are concerned that a party with whom you are in dispute will start legal proceedings in a Court you wish to avoid, starting proceedings in your favoured Court first can be important. Because the plaintiff has the power to select the venue where the case is filed – both the locality (if more than one jurisdiction is available) and the Court (if, e.g. a claim may be brought in either state or federal Court) – allowing an opposing party to file suit first may result in litigation in an unfavourable forum. Some Courts are known for being particularly favourable to local parties, or to plaintiffs over defendants. These factors may make one Court significantly less desirable as a litigation forum. A state or federal Court with jurisdiction to hear a matter will be seised of the matter upon the filing of a complaint or, where applicable, upon the filing of a pre-complaint motion for preliminary injunctive relief.
5. Are there any steps I need to take before commencing proceedings?	The English Courts have issued pre-action protocols that are designed to ensure that starting Court proceedings is a last resort and that parties correspond, including exchanging information, in order to try to settle their disputes before going to Court. However, in commercial cases, this is not intended to be an elaborate process, and will, e.g. be unnecessary if you are concerned that the other party will start proceedings in a jurisdiction you wish to avoid (see question no. 4).	In most cases, there are no formal steps that are required before Court proceedings can be commenced, although all state and federal Courts require that every claim be made in good faith.

	United Kingdom	United States of America
6. Is there any interim relief that might improve my position?	The principal relief that might be available is an interim injunction, typically to preserve the status quo pending resolution of the dispute or to freeze the debtor's assets for subsequent enforcement purposes. If, e.g. you are in dispute over property, the Court might be prepared to grant an injunction to prevent the property being sold pending the resolution of the dispute. The main questions at the interim stage will be whether there is a serious issue to be tried, where the balance of convenience lies, and whether damages would ultimately prove to be an adequate remedy. More generally, a Court can grant a freezing injunction if the claimant has a good arguable case on the merits and there is a real risk that the defendant will deal with its assets with the result that they are not available if judgment is given against it. This commonly requires something approaching fraud on the part of the defendant; carrying out transactions in the ordinary course of business will not suffice even if the result will be to reduce the assets that might be available for enforcement purposes. Freezing injunctions can be granted either in support of proceedings in England or in support of proceedings elsewhere, but in the latter case there must be a real connecting link between the subject matter of the measures sought and England (e.g. the injunction must be directed to assets in England). In order to secure an interim injunction or a freezing injunction, it is necessary to give an undertaking in damages, i.e. to agree to pay any damages that the injunction causes to the defendant in the event that the injunction proves unjustified (usually because the claimant loses the case). This undertaking may need to be supported by a bank or similar guarantee.	The principal interim relief that might be available is a preliminary injunction to preserve the status quo pending resolution of the dispute or to freeze a party's assets for subsequent enforcement purposes. If, e.g. you are in a dispute over property, the Court might grant an injunction to prevent the property being sold pending the resolution of the dispute. To secure a preliminary injunction, a party typically must show that it is likely to succeed on the merits of its claim; that there is a substantial risk of harm if the injunction is not granted; that this risk of harm outweighs any possible prejudice to the opposing party; and that the public interest favours granting the injunction.
7. What judges or other persons will hear my case?	At first instance, the case will be heard by a single judge and, on appeal, usually by three judges. Judges in England are former practising lawyers.	At first instance, the case will almost always be heard by a single judge in pre-trial proceedings. If the case is of a type that may be tried by a jury, and if any party invokes the right to a jury, the case will be heard at trial by a jury usually numbering between six and 12 persons and overseen by a single judge. Most cases may be tried by a jury, though some types of cases – e.g. admiralty matters – never are. If the case is not of a type that may be tried to a jury, the case will be heard at trial by a single judge. On appeal, the case will usually be heard by a panel of three or more judges.

United Kingdom and United States of America (continued)

	United Kingdom	United States of America
8. Is there usually an appeal?	No. An appeal cannot be brought without the permission of the Court. Permission will only be granted if the appeal has a real prospect of success or, in unusual cases, if there is some other compelling reason. Appeals are generally about matters of law, but in limited circumstances can extend to the facts.	Normally, any party can bring an appeal without the Court's permission, so long as the appeal is from a final judgment disposing of all of the claims at issue. A party seeking to appeal a non-final judgment (e.g. a ruling concerning the admissibility of evidence) usually must first obtain the Court's permission. On appeal, it is generally not possible to raise questions and objections not raised in the Court of first instance.
9. What are the usual stages of appeal in your country for significant civil matters? What lawyers need to be instructed?	Significant civil matters are heard by the High Court. Parties can represent themselves if they wish but, generally, it is necessary to instruct an English-qualified solicitor. It is common for the solicitor to instruct a barrister to perform the oral advocacy before the Court. Appeals from the High Court go to the Court of Appeal (if permission is given by either of those Courts), from which there is a further appeal to the Supreme Court (again, with permission). Appeals to the Supreme Court are confined to points of law of general public importance. The lawyers who acted before the High Court can act on the appeals to the Court of Appeal and the Supreme Court.	Significant civil matters are usually heard by the intermediate appellate Court for the relevant state or federal jurisdiction. Judgments of the intermediate Courts of appeal can be appealed to the state or federal supreme Court (called the Court of Appeals in New York), which often has discretion to accept or decline the appeal. Individual persons can represent themselves in any appellate Court but a corporation must be represented by an attorney. Any attorney may appear who is admitted to practise before the relevant Court.
10. What might typical claims for €1 million, €10 million and €100 million cost to bring?	The cost of litigation will vary significantly depending on the nature of the dispute. Some Court fees vary with the amount of the claim but overall costs are relatively low (seldom more than £10,000 even for a very high value claim, though there are proposals to raise fees somewhat). Lawyers' fees will depend upon the amount of work involved. A claim for €1 million that is factually complex and that requires consideration of a large number of documents will cost more than a straightforward claim for €1 billion.	The cost of litigation will vary significantly depending on the nature of the dispute and the extent of the proceedings. Court fees for filing cases are generally relatively low (in the order of a few hundred dollars). Lawyers' fees will depend upon the amount of work involved and, sometimes, upon the amount of any relief recovered. It is difficult to litigate any significant matter for less than €1 million in lawyers' fees, and it is not uncommon for such fees to exceed €10 million over the life of a complex litigation. There is not necessarily any correlation between the amount at issue and the amount of the lawyers' fees.
11. If we fight and win this litigation, will we get our costs back?	You will generally recover a proportion of your costs, typically between half and two-thirds of the actual costs, provided that the costs are not disproportionate to the amounts at stake. Correspondingly, if you lose the case, you will ordinarily be ordered to pay the other side's costs. Costs recovery might, however, be reduced if you have lost on some of the issues before the Court even though you have won overall and, particularly, if a claimant has refused a settlement offer from the other side that was higher than the amount eventually awarded.	In US state and federal Courts, each party generally pays its own costs. In some types of cases (e.g. class actions), however, statutory fees are available, and Courts sometimes order a party to pay its opponent's fees upon a finding that a claim or argument is frivolous or that there has been litigation misconduct.

	United Kingdom	United States of America
12. How long does a typical piece of litigation take, including appeals?	The duration of a case will depend upon its complexity and how much Court time is required. However, a typical case requiring a trial of up to two weeks might take between nine months and two years to reach judgment, with an appeal adding another six to nine months. If the case can be disposed of through, e.g. summary judgment (i.e. an application early in the proceedings for judgment on the basis that the other party has no reasonable prospect of success), it will be considerably quicker.	The duration of a case will depend on its complexity. A typical case that proceeds to trial might take between one and five years to reach judgment, with an appeal adding another year or more. If the case can be disposed of on motions (i.e. can be dismissed for lack of an actionable claim or decided on summary judgment based on documentary evidence), the time to judgment may be considerably shorter.
13. Is there any process of documentary discovery or disclosure and, if so, how wide does it go?	Yes. Whether to order disclosure and the extent of that disclosure is in the discretion of the Court. However, parties are generally required to conduct a reasonable search for documents and to disclose not only documents upon which they rely but also those documents they find in the course of their search that adversely affect their case or that of another party. For these purposes, documents include not just documents on paper but also e-mails, texts and any other sort of electronic documents. Privileged documents (see below) do not need to be disclosed.	Yes. If a claim proceeds past the motion-to-dismiss stage (i.e. if the complaint alleges facts that, if true, would entitle the claimant to relief), a Court will almost always permit relatively broad discovery. In discovery, a party usually must, upon request by the opponent, produce all information and documents that are relevant, not privileged, and reasonably likely to lead to the discovery of admissible evidence. Privileged documents and documents prepared by attorneys in anticipation of litigation generally need not be disclosed.
14. How is evidence obtained from witnesses for Court proceedings?	For interim hearings, evidence from witnesses is usually by written statement only. For a trial, at which ultimate liability will be decided, evidence is initially by written statement but this will be followed by detailed cross-examination by the lawyer acting for the other party. Cross-examination can be lengthy and hostile.	In pre-trial proceedings, evidence from witnesses is usually presented by way of written statement, either in the form of an affidavit or declaration signed under oath by the witness or in the form of a transcribed deposition in which the attorneys for the parties ask questions of the witness under oath. At trial, witnesses usually must testify in person, under oath, on direct examination by the attorney for the party calling the witness and on cross-examination by the opposing attorney. Cross-examination can be lengthy and hostile.

United Kingdom and United States of America (continued)

	United Kingdom	United States of America
15. How wide is privilege in litigation?	The two most common forms of privilege are legal advice privilege and litigation privilege. Legal advice privilege applies to all communications made in confidence between lawyers and their clients for the purpose of giving or obtaining legal advice. Litigation privilege applies to communications between parties or their lawyers and third parties for the sole or dominant purpose of obtaining information or advice in connection with existing or contemplated litigation. Privileged documents do not need to be disclosed to the other side. A related area is without prejudice communications with the other side. In most instances, without prejudice material cannot be placed before the Court. The without prejudice rule applies to communications with the other side (e.g. admissions or other concessions) in the course of genuine negotiations seeking to settle actual or contemplated litigation. Without prejudice material will usually be marked as such, but just because something is headed "without prejudice" does not necessarily mean that it is in fact within the rule; nor does the absence of marking mean that it is necessarily outside the rule.	The two most common forms of privilege are the attorney-client privilege and the work product protection. Attorney-client privilege applies to all communications made in confidence between lawyers and clients for the purpose of giving or obtaining legal advice. Attorney-client privilege may also extend to communications involving experts or other persons employed by an attorney in connection with the client's case, and to communications with other parties sharing a common interest in the subject of the litigation. The attorney-client privilege belongs to, and can be waived by, the client alone. A Court will almost never require a party to disclose information protected by the attorney-client privilege. The work product protection applies to materials created by attorneys in anticipation of litigation, to the extent that those materials reflect an attorney's thoughts or strategy concerning the litigation. A Court may order a party to disclose information encompassed by the work product protection upon a showing by the opposing party that the information is critical to that party's case and cannot be obtained from any other source. In practice, such orders are rare.
16. Do the same rules on privilege apply to regulatory investigations?	Yes. Regulatory bodies cannot compel the production of privileged material.	Yes. Regulatory bodies cannot compel the production of privileged material.
17. Is advice from in-house lawyers privileged?	Yes, provided that it is legal advice (as opposed, e.g. to advice on business or management issues). However, if you are facing an EU competition investigation, advice from in-house lawyers is not privileged (it will be privileged if the investigation is being conducted by domestic competition authorities).	Yes, provided that it is legal advice (as opposed, e.g. to advice on business or management issues).

	United Kingdom	United States of America
18. How can I preserve privilege when conducting an internal investigation?	There is no easy way but, assuming that litigation is not in contemplation, the investigation must be led by a lawyer and must comprise confidential legal advice if it is to have any hope of being privileged. Even then, if a report is commissioned from a third party for the purposes of the investigation, that report will not usually be privileged.	As long as the investigation is conducted by a lawyer and results in the provision of confidential legal advice to management, documents and communications associated with the investigation should be protected by attorney-client privilege. If the investigation is conducted in anticipation of litigation, then documents prepared in the course of the investigation should also be protected by the work product doctrine. If, however, the report of an investigation is disclosed to a third party or submitted to a Court, even under seal, any privilege or protection is likely to be deemed waived.
19. Do I need to appoint an agent for service within the chosen jurisdiction for litigation in a contract?	There is technically no need for a non-UK party to appoint an agent for service in England, but service will be significantly quicker and cheaper if an agent is appointed. It can then take some time to serve the claim from outside the UK, as well as often requiring translations of the documents and local legal advice. Even where the EU's service regulation (EC/1393/2007) applies, it can easily take at least a month for service to be effected; where service under the Hague Convention is required, it can take six months or more.	There is technically no need for a non-US party to appoint an agent for service in the US, but service may be significantly quicker and cheaper if an agent is appointed. If a plaintiff seeks to bring proceedings in a US state or federal Court against a party located outside the jurisdiction, the plaintiff may only be able to serve that party with process if and to the extent that service outside the jurisdiction is permitted under the relevant Court rules.

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