

# Cayman Islands

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## TYPES OF DISPUTE RESOLUTION

### 1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction to settle large commercial disputes, identifying any recent trends.

Litigation remains the principal method for resolving disputes. This is partly because of the accommodating approach shown by the Cayman Islands courts to parties that require confidentiality and/or flexible timetables (two factors that usually attract parties to arbitration).

However, as the general awareness and appreciation of alternative dispute resolution (ADR) mechanisms continues to grow, there has been a significant rise in local arbitrations, principally for insurance and construction disputes. The Arbitration Law was revised and updated in 2001 and there are proposals to reform it substantially (see *Question 36*). There has also been an increasing use of mediation (see *Question 29*).

The procedural rules of court are subject to an overriding objective to deal with every matter in a just, expeditious and economical way. The Grand Court of the Cayman Islands (Grand Court) has the power to give directions of its own motion to achieve this objective, including directions that facilitate ADR, and has shown an increasing willingness to use this power.

## COURT LITIGATION - GENERAL

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period? Please briefly set out any different rules for particular areas of law relevant to large commercial disputes, for example contract, tort and land disputes.

The limitation period runs from the date of accrual of the cause of action, and different claims are subject to different general limitation periods (although in each case there are exceptions):

- Contract claims must be brought within six years of the breach of contract.
- Tort claims must be brought within six years of the accrual of the cause of action. In the tort of negligence, the most common tort, this period is six years from the suffering of damages as a result of the conduct in question.

- Claims for recovery of land must be brought within 12 years.
- Claims for breach of trust and for equitable relief have no statutory limitation period, although delaying claims unfairly can result in the Court refusing to allow a claim to succeed.
- There are special rules extending the limitation period in certain circumstances where the party did not know immediately that it had suffered damage, or the alleged wrongdoing was deliberately concealed from the proposed claimant (plaintiff).

### 3. Please give a brief overview of the structure of the court where large commercial disputes are usually brought. Are certain types of dispute allocated to particular divisions of this court (for example, IP, competition or maritime disputes)?

Large commercial disputes are brought in the Grand Court, under procedural rules closely based on the English Supreme Court Practice 1999. The Grand Court is a superior court of record, with the same inherent jurisdiction as might be exercised by the High Court of England and Wales.

A project is currently underway to create divisions of the Grand Court, particularly a Financial Services Division (see *Question 36*). It is hoped that the Financial Services Division will start operating in 2009. The judges of the Grand Court have considerable expertise in disputes concerning offshore finance and corporate disputes. The answers to the following questions relate to procedures that apply in the Grand Court.

### 4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought and what requirements must they meet? Can foreign lawyers conduct cases in these courts?

All attorneys admitted to practice in the Cayman Islands have rights of audience in the Grand Court. There is a fused profession, which makes no formal distinction between solicitors and barristers. Some foreign lawyers may also qualify to be admitted for the limited purpose of appearing in a particular case in the Grand Court.

**FEES AND FUNDING****5. What legal fee structures can be used? For example, hourly rates, task-based billing, and conditional or contingency fees? Are fees fixed by law?**

Litigation lawyers charge according to hourly rates and through interim billing, rather than lump sums payable at the conclusion of litigation. Conditional fee agreements, where payment is dependent on a party's success in an action, require approval by the Grand Court, which is rarely sought or granted. These arrangements do not allow an attorney to share in the proceeds of any monetary award granted by the Court.

Hourly rates range from between US\$250 (about EUR185) for paralegals and US\$700 (about EUR515) for partners. These rates are generally lower than those of their counterparts in onshore litigation centres. The law does fix hourly rates for the purpose of recovering lawyers' costs from an unsuccessful party (see *Question 21*).

**6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?****Funding**

Litigation is usually funded by the parties themselves. It is possible for third parties to fund litigation, subject to compliance with the rules against maintenance and champerty. Maintenance is the giving of assistance to a party in litigation by a person who has no interest or motive recognised by law as justifying his interference. Champerty is maintenance of an action in return for a promise of a share of the proceeds of the action. Whether a third party has a legitimate commercial interest in funding the litigation (for example, a shareholder of the party) depends on a number of factors, including whether the maintainer accepts liability for the opposing party's fees and the degree to which the maintainer influences the proceedings.

**Insurance**

Insurance may be available, but there is no established market for litigation insurance among local providers.

**COURT PROCEEDINGS****7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?**

Petition hearings and the trials of writ actions are held in open court and are public. Interlocutory (interim) hearings are held in chambers and are private, although chambers judgments are not confidential to the parties, unless the Court orders that it is confidential. All forms of originating process (such as petitions and writs) are open to public inspection; documents subsequently filed in the proceedings are not. Parties are prohibited from using documents disclosed in the proceedings for purposes outside of the litigation, until they have been read by the court or referred to in open court.

There are a number of specific measures available to preserve the confidentiality of particular proceedings. Parties can apply for:

- A hearing that would usually be public to take place in private, or the court file to be sealed from public inspection (or both).
- The publication of information relating to proceedings to be restricted, or details contained in court judgments to be edited (or both).

The Grand Court is sensitive to the need for the protection of confidentiality of commercial arrangements, and will readily make suitable orders to protect parties' commercial interests

**8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?**

There are no pre-action protocols imposed by rules of court. However, the court has a general discretion to impose costs sanctions on parties whose pre-action conduct is unreasonable and results in unnecessary additional costs being incurred.

**9. Please briefly set out the main stages of typical court proceedings, including the time limits (if any) for each stage, any penalties for non-compliance and the role of the courts in progressing the case. In particular:**

- How a claim is started.
- How the defendant is given notice of the claim and when the defence must be served.
- Subsequent stages.

**Starting proceedings**

A writ or other form of originating process (such as an originating summons, notice of motion, or petition) is filed for issue by the court.

**Notice to the defendant**

The plaintiff gives notice by serving the originating process on the defendant (or its authorised representative or appointed attorneys). Personal service is usually required, which in the case of a corporate defendant means delivery to its registered office.

**Subsequent stages**

The default stages provided by court rules are:

- Acknowledgment of service and notice of intention to defend. For Cayman companies and residents this must be filed with the court within 14 days of service of the writ. For other parties there are different times depending on the parties' place of residence.

- Statement of claim: to be served within 14 days after service of notice of intention to defend (if not served with the writ).
- Defence (and any counterclaim): to be served within 14 days of the acknowledgment or the statement of claim, whichever is later (but no less than 28 days after service of the writ).
- Reply (and any defence to counterclaim): to be served within 14 days after the defence.
- Lists of disclosable documents: to be exchanged within 28 days after the reply.
- Summons for directions: to be issued within 14 days after exchanges of the lists, to deal with future conduct of action towards trial and any other interim matters.

In large commercial disputes, these periods are usually extended by agreement between the parties or by order of the court, but they can be shortened in cases of exceptional urgency. Non-compliance with deadlines can ultimately result in a plaintiff's claim being struck out or judgment being entered against a defendant (as the case may be), but this normally requires non-compliance with at least two successive court orders.

## INTERIM REMEDIES

### 10. What actions can a party bring for a case to be dismissed before a full trial (for example, summary judgment or for a claim to be struck out)? On what grounds must such a claim be brought? Please briefly outline the procedure that applies.

A party can apply to the Grand Court for summary judgment or strike out before a case proceeds to a full trial. The following summary judgment procedures are available:

- A plaintiff can apply any time after the defendant has acknowledged service, on the basis that the defendant has no real or bona fide defence.
- A defendant can apply any time after serving a defence, on the basis that the plaintiff's claim, or part of the claim, has no prospect of success or recovering more than nominal damages.

The court can at any stage be asked to strike out a pleading (and order the action to be stayed, dismissed or judgment to be entered accordingly), on the following grounds:

- It discloses no reasonable cause of action or defence (as the case may be).
- It is scandalous, frivolous or vexatious.
- It may prejudice, embarrass or delay the fair trial of the action.

- It is otherwise an abuse of the process of the court.
- There has been a wilfully disobedient breach of a final court order imposing a deadline for filing or serving a required document (such as a pleading, a list of documents or a witness statement).

### 11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

There is discretion at any stage of the proceedings to order a plaintiff to provide security for a defendant's costs if, having regard to all the circumstances of the case, the court thinks it just to do so. Security is given by payment into court, by bond or in such other manner the court directs. The principal grounds for the grant of security for costs are:

- The plaintiff is a limited company incorporated under Cayman law, and there is reason to believe that the assets of the company will be insufficient to pay the defendant's costs.
- The plaintiff is ordinarily resident outside the Cayman Islands (although security in these circumstances is generally limited to the added cost of enforcement of costs ordered abroad).
- The plaintiff (not being a plaintiff suing in a representative capacity) is a nominal plaintiff suing for the benefit of another person, and there is reason to believe that it will be unable to pay the defendant's costs.

### 12. In relation to interim injunctions granted before a full trial:

- Are they available and on what grounds are they granted?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Are mandatory interim injunctions to compel a party to do something available in addition to prohibitory interim injunctions to stop a party from doing something?

Most interim remedies (in particular, injunctions to restrain the disposal of assets) can be obtained without notice to the defendant in urgent cases, or where the relief sought would be frustrated if notice were given to the defendant. Applications made without notice impose extra burdens on the applicant and its attorneys, in particular an obligation to make full and frank disclosure to the court.

In exceptionally urgent cases, the court can hear an application on the same day as or the day after it is filed, although it is rare that the court is persuaded that the matter is urgent enough to bypass the normal listing requirements.

Where an order is obtained without notice, the defendant is entitled to challenge the order at a later hearing. Injunctions can be mandatory or prohibitory.

**13. In relation to interim attachment orders to preserve assets pending judgment or a final order (or equivalent):**

- Are they available and on what grounds must they be brought?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Do the main proceedings have to be in the same jurisdiction?
- Does attachment create any preferential right or lien in favour of the claimant over the seized assets?
- Is the claimant liable for damages suffered as a result of the attachment?
- Does the claimant have to provide security?

A plaintiff can apply to court for an order to restrain a defendant from dealing with, disposing of or otherwise dissipating its assets to frustrate any judgment obtained against it (Mareva injunction). Mareva injunctions can relate to assets within the court's jurisdiction, or in some cases worldwide. No proprietary claim to the assets is required, but the injunction only takes effect as a personal prohibition, not as a physical attachment. To obtain such an injunction, it may be necessary to establish a substantive cause of action, which can be determined by the Grand Court. Third parties, such as banks, who are put on notice of an injunction, must not assist the defendant in removing assets from their control.

In exceptional circumstances, a search-and-seizure order (Anton Piller order) is available. This permits the physical seizure of assets that need to be preserved as the subject matter of the action, and that may otherwise be concealed or destroyed.

Urgent applications may, in exceptional circumstances, be heard on the day of filing (see *Question 12*). Plaintiffs will be required to give an undertaking, to pay any damages that may be caused to the other parties for which they may be held liable, in virtually all cases where interim relief is granted. Plaintiffs can also be required to provide security to support their undertaking.

**14. Are any other interim remedies commonly available and obtained? If yes, please give brief details.**

Other interim remedies include:

- Orders for interim payments (whether in relation to debts, damages or accounts to be taken).
- Other forms of interim injunctions, both mandatory and prohibitory.
- Discovery orders, including against third parties. Discovery orders are particularly important in asset tracing cases, and the Grand Court regularly considers applications for disclosure of banking documentation to assist international asset tracing disputes.

**FINAL REMEDIES****15. What remedies are available at the full trial stage (for example, damages and injunctions)? Are damages just compensatory or can they also be punitive?**

The principal remedies are:

- Damages (for breach of contract or tortious duty), which are compensatory rather than punitive.
- Specific performance of contractual obligations.
- Injunctions (prohibitory or mandatory).
- Declarations (as to rights or as to a particular state of affairs).

**EVIDENCE****16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?**

A party must disclose the existence of all documents that are, or have been, in its possession, custody or power relating to any matters in question in the dispute (whether helpful or harmful). These include documents:

- Held by agents on behalf of a party.
- Held by a party, but belonging to others.
- Which a party does not possess, but in which it owns or retains a right of possession.

The relevance of documents is not limited to the subject matter of the action or to their admissibility in evidence. Relevance is widely construed and documents that might not ordinarily be thought relevant must often be disclosed. A document is relevant if it can either:

- Assist one or other of the parties, however slightly, to advance its own case or damage its opponent's case in relation to any issue.
- Lead to a train of enquiry which may (indirectly) have that result.

The disclosure of documents is governed by the Grand Court Rules. Disclosure is conducted initially by exchanging lists of documents to be disclosed, followed by inspection and copying of all documents which are not exempt from production on grounds of privilege or third-party confidentiality. Leave of the court may have to be obtained before documents that contain confidential information belonging to third parties can be disclosed (see *Question 17*).

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**17. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:**

- **Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?**
  - **If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?**
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**Privileged documents**

A party can withhold certain documents from inspection by the other party on the grounds of privilege, although their existence must still be disclosed in general terms in a party's list of documents (see *Question 16*). Whether or not a particular document or class of documents is privileged can be contentious, but the following categories of documents are generally privileged:

- Correspondence between a party and its lawyers, whether or not connected with the litigation, which is confidential and written for the purpose of giving or obtaining legal advice (this includes correspondence with in-house lawyers, unless it relates to administrative matters and not legal advice).
- Correspondence between a party's lawyers and third persons, where that correspondence is connected with the litigation (other than open correspondence with the other party's lawyers).
- A party's lawyers' file notes, drafts, instructions and briefs to counsel, and counsel's opinions and notes.
- Experts' reports and witness statements prepared in connection with the litigation (unless and until disclosed to the other party).

The following documents are not privileged:

- Notes relating to the litigation prepared by a party for internal purposes (including board minutes recording discussion of the litigation), unless for the purposes of reporting, when strictly necessary, to others in the party's organisation on advice received from lawyers, or seeking information requested by lawyers.
- Notes to the published accounts concerning the litigation and any provision for the proceedings in the accounts, and related correspondence with accountants.
- Written communications between a party and outsiders (such as the party's parent company or subsidiary, the police and other authorities, insurers and professional advisers other than the party's own lawyers), or written notes recording these communications, unless these documents came into existence for the dominant purpose of obtaining legal advice in connection with existing or contemplated proceedings.

A document is not privileged just because it is considered (or marked) confidential or because it is produced internally. In particular, current case law in England (likely to be followed in the Cayman Islands) suggests that if litigation is not actually in prospect, docu-

ments prepared by employees of a party to be sent to its lawyers may not be privileged if they do not amount to communications between the client and its lawyers for the purpose of taking advice.

**Other non-disclosure situations**

A party can object to disclosure of a document on the basis that it contains confidential information imparted by a third person (the relevant principal) which the party is not authorised to disclose (Confidential Relationships (Preservation) Law). In those circumstances, if the relevant principal does not give his consent, the party must make a separate application to the court for directions as to whether disclosure should be made, and if so under what conditions.

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**18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?**

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Before the trial, the parties exchange statements containing the testimony that the witnesses of fact will give at the trial. Those witnesses must then attend the trial to confirm the contents of their statements and to be cross-examined, failing which their statements will usually not be admitted as evidence. In exceptional cases, for example, where witnesses are abroad and there is a good reason why they cannot attend, the trial judge may admit their witness statements in evidence without cross-examination. The Grand Court will, exceptionally, permit the provision of witness evidence through a video link.

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**19. In relation to third party experts:**

- **How are they appointed (for example, are they appointed by the court or by the parties)?**
  - **Do they represent the interests of one party or provide independent advice to the court?**
  - **Is there a right to cross-examine (or reply to) expert evidence?**
  - **Who pays the experts' fees?**
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**Appointment**

Expert witnesses are appointed privately by each party. This is usually under court directions that:

- Specify the number of experts in particular fields who can give evidence at trial.
- Require the experts to exchange written reports with each other.

**Role of experts**

An expert's role is to provide independent assistance to the court by way of unbiased opinion in relation to matters within his expertise. An expert witness should not be an advocate on behalf of the party by whom he is retained, and his evidence should be uninfluenced by that party's position.

**Right of reply**

An expert whose report is relied on by one party must usually be available for cross-examination by the other party at trial. Sometimes the court may order the experts to meet before trial, to produce a joint statement indicating areas of agreement and disagreement.

**Fees**

An expert's fees are paid by the party who retained him. The party who ultimately succeeds at trial can recover those fees through an order that the unsuccessful party pay his costs of the action (see *Question 21*).

**APPEALS****20. In relation to appeals of first instance judgments in large commercial disputes:**

- **To which courts can appeals be made?**
- **What are the grounds for appeal?**
- **Please briefly outline the typical procedure and timetable.**

Appeals can be made to the Court of Appeal. A further appeal can be made, in certain circumstances, to the Judicial Committee of the Privy Council which sits in England.

Grounds of appeal are usually based on:

- Error of law.
- Mistaken conclusion of fact.
- Improper exercise of discretion.
- Procedural impropriety.

Appeals must be filed within 14 days. Leave of the court is sometimes required to pursue an appeal from some decisions, including:

- Consent orders.
- Orders for costs.
- Most interim orders.

Some orders cannot be appealed at all, including:

- An order dismissing a summary judgment application.
- Where legislation provides that the court's decision is final.

Once the notice and grounds of appeal have been filed, the Registrar of the Court of Appeal lays down a timetable for the exchange of written arguments and other materials to be lodged with the Court, and fixes a hearing date in consultation with the parties' counsel.

**COSTS****21. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors do the court consider when awarding costs (for example, any pre-trial offers to settle)?**

In general, the successful party can expect to recover from the losing party its reasonable costs incurred in conducting the proceedings in an economical, expeditious and proper manner (unless the Grand Court orders otherwise).

Detailed guidelines govern the recoverability of certain fees and disbursements and the taxation process (by which the successful party's costs are assessed). The costs are then made the subject of an award which is enforceable as a money judgment against the unsuccessful party. This process can result in a significant proportion of a party's actual costs (as much as 25% or even 40% in some cases) being irrecoverable, usually because they are deemed excessive or it would otherwise be unreasonable for them to be paid by the losing party.

Where a plaintiff rejects an offer to settle and then succeeds at trial, but is awarded less than a settlement offer made by the defendant, it may be ordered to pay the defendant's costs from the date of the offer.

**22. Is interest awarded on costs? If yes, how is it calculated?**

Interest is payable from the date of service of a costs award, according to prescribed rates which are amended from time to time. The present rate of interest (effective from 1 December 2008) is 5%.

**ENFORCEMENT****23. What are the procedures to enforce a local judgment in the local courts?**

Domestic judgments can be enforced in several ways, the most common of which are:

- The appointment of a receiver.
- A petition to wind up a debtor company.
- Garnishee proceedings (requiring a third party who owes money to the judgment debtor to pay the money to the successful party).
- Seizure of assets with a writ of sequestration.
- A charging order.

## CROSS-BORDER LITIGATION

**24. Do local courts respect the choice of law in a contract (that is, if the parties agree that the law of a foreign jurisdiction will govern the contract)? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?**

The courts generally give effect to a choice of law clause in any contract, unless there are public policy reasons for not doing so (such as an attempt to avoid obligations imposed by local legislation). Areas of local law which may apply irrespective of a choice of law include:

- Financial services regulation.
- Issues relating to the sale of goods.
- Claims for misrepresentation.
- Employees' rights (including health insurance and pension rights).
- Real estate transactions.
- Insolvency (both corporate and individual).

**25. Do local courts respect the choice of jurisdiction in a contract (that is, if the parties agree that claims will be brought in the courts of a foreign jurisdiction)? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?**

Where there is an agreement to refer disputes to a foreign court exclusively, the court has discretion to allow a dispute to proceed in the Grand Court. However this discretion is rarely exercised. The plaintiff seeking to invoke the court's jurisdiction must show a strong cause for doing so in the circumstances of the case, and usually must show that all the parties necessary for the determination of the dispute cannot appear in the chosen jurisdiction.

**26. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, please briefly outline the procedure to effect service in your jurisdiction. Is your jurisdiction party to any international agreements affecting this process?**

Service must be effected in a way that would constitute effective service under the laws of the relevant foreign jurisdiction or according to any contract between the parties. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention) applies to the Cayman Islands. Under this convention, the Clerk of the Court can be requested to arrange for service of foreign proceedings (duly translated into English if necessary) according to Cayman law regarding the service of documents in domestic actions. This generally requires personal service on an individual or delivery to a corporate party's registered office.

**27. Please briefly outline the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction. Is your jurisdiction party to an international convention on this issue?**

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention) applies to the Cayman Islands. Under this convention, the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 sets out a comprehensive code for taking evidence from a witness in the Cayman Islands for use in foreign proceedings. Under this code, an application is made to the Grand Court under a letter of request issued by a foreign court, seeking evidence for the purposes of civil proceedings before that court. The Grand Court has extensive powers to make an order to give effect to the request, subject to a number of limitations imposed by statute and by common law. The Grand Court does not execute letters of request issued to obtain general or pre-trial discovery of documents, and will protect any privileges to which a witness would be entitled under Cayman law.

The Grand Court can also, in appropriate circumstances, grant orders for disclosure of documents against third parties at the request of litigants pursuing claims in foreign jurisdictions.

**28. What are the procedures to enforce a foreign judgment in the local courts?**

A foreign judgment can be enforced in the Cayman Islands at common law, by way of a writ action in the Grand Court, if all of the following apply:

- It was issued by a court with valid personal jurisdiction over the defendant.
- It is final and conclusive (although it may be subject to appeal).

It cannot be impeached on grounds such as fraud, breach of natural justice or being contrary to public policy.

It is no longer a requirement that the judgment be for a debt or a definite sum of money, although these judgments are easier to enforce. A claim for foreign taxes will not be enforced.

## ALTERNATIVE DISPUTE RESOLUTION

**29. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Please briefly outline the procedures that are typically followed, and any rules that apply.**

The principal alternative to litigation is arbitration, since arbitral awards can be readily enforced in local and foreign courts under international conventions and bilateral treaties for the reciprocal enforcement of arbitral awards.

However, increasing numbers of disputes are now being settled by mediation, in cases where the traditional adversarial approach may not allow for a resolution that is satisfactory to the parties. The answers to the following questions exclude arbitration.

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**30. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?**

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ADR is essentially a matter of mutual agreement between the parties. There are no procedural rules requiring it, and the courts have no powers to force parties to attempt ADR before resorting to or continuing with litigation. However, the Grand Court's duty to actively manage legal proceedings does include helping the parties to settle the whole or part of the proceedings, and the Court encourages parties to use ADR in appropriate cases.

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**31. Is ADR confidential?**

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This is a matter for the parties to decide. Mediation is usually not only confidential but also without prejudice to the parties' publicly-stated position (in case mediation is not successful).

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**32. How is evidence given in ADR? Can documents or admissions made or produced in (or for the purposes of) the ADR later be protected from disclosure by privilege?**

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This depends on what form of ADR process is used and what the parties agree on. However, the aim of most ADR processes is to avoid the formalities and adversarial elements in litigation (which may be counter-productive to resolving a dispute) such as giving or exchanging evidence.

If the parties commit to a binding process (such as binding neutral evaluation or adjudication), documents produced and admissions made in that process are not likely to be privileged. On the other hand, if the parties attempt resolution through a non-binding process (like early neutral evaluation or mediation), documents and admissions are usually privileged.

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**33. How are costs dealt with in ADR?**

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This is a matter for the parties to decide. Very often, costs are a significant point of issue between the parties and the allocation or reimbursement of costs forms part of any settlement. However, once the parties manage to resolve their principal points of dispute in an ADR process, they frequently agree to make no provision for costs and leave them to lie as they have been incurred.

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**34. Is ADR used more in certain industries? If yes, please give examples.**

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ADR is particularly used in insurance and construction disputes, although it can assist in resolving almost any kind of dispute (except where judicial determination of a legal question is required).

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**35. Please give brief details of the main bodies that offer ADR services in your jurisdiction.**

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There are no dedicated organisations that offer ADR services. A number of local firms include practitioners who have ADR qualifications and are members of recognised institutions, such as the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution (CEDR) or ADR Chambers.

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**REFORM**

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**36. Please summarise any proposals for dispute resolution reform and state whether they are likely to come into force and, if so, when.**

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A project is currently underway to create divisions of the Grand Court, particularly a Financial Services Division. This will also include provision for wider case management powers, greater use of technology for electronic filing, computerisation of the Court Registry, and accessing information and documents through the court website. It is hoped that the Financial Services Division will start operating in 2009.

The Law Society is currently preparing draft legislation for recommendation to the government, which would radically reform and update the Arbitration Law to bring it in line with modern international models (such as the UNCITRAL Model Law on International Commercial Arbitration 1985). It is hoped that these proposals will become law during 2009.

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