

**International  
Comparative  
Legal Guides**



Practical cross-border insights into litigation and dispute resolution work

**Litigation & Dispute  
Resolution  
2022**

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# Bermuda

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## 1 Litigation – Preliminaries

**1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?**

Bermuda is a British Overseas Territory (“BOT”). The United Kingdom (“UK”) Judicial Committee of the Privy Council “JCPC” (comprising the same judges appointed to the UK Supreme Court) is the court of final appeal for Bermuda.

The common law, doctrines of equity and acts of Parliament of England extant as at 11 July 1612 are considered to be in force in Bermuda. Since this time, Bermuda has enacted its own legislation and its common law and equity have developed in the Bermuda courts, with much influence from other common law jurisdictions (the UK, the United States, Canada, Australia, etc.).

The Rules of the Court of Appeal for Bermuda 1965 govern the civil procedure in Bermuda’s Court of Appeal.

The Rules of the Supreme Court of Bermuda 1985 (as amended in 2006) (“RSC”) govern the civil procedure in Bermuda’s Supreme Court.

The Magistrates’ Court Rules 1973 govern the procedure in Bermuda’s Magistrates’ Court.

**1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?**

The civil court system in Bermuda comprises the Magistrates’ Court, the Supreme Court and the Court of Appeal.

Appeals from judgments of the Magistrates’ Court are to the Supreme Court. Appeals from the Supreme Court lie to the Court of Appeal. Appeals from the Court of Appeal are to the JCPC.

The Supreme Court has a specialist Commercial Court, an administrative subdivision in which specialist commercial judges sit.

**1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?**

The main stages in civil proceedings include: pleadings; discovery; factual witness evidence; expert evidence (if appropriate); and trial with live witness testimony and submissions from counsel.

Most Supreme Court proceedings will reach trial within approximately 12–18 months from the date of issue. The Supreme

Court can order expedited trials where appropriate, which may shorten the period to just six months to trial. Urgent cases, for example *ex parte* injunctions, can be heard by the Supreme Court on the same day – including outside of normal court working hours and on weekends, if necessary.

The Magistrates’ Court can usually hear trials within six months from the date of issue.

**1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?**

The Supreme Court of Bermuda recognises the strong public policy in favour of upholding exclusive jurisdiction and arbitration clauses. It will ordinarily robustly uphold and enforce such clauses by way of stays of proceedings and anti-suit injunctions that are brought in breach of such clauses.

**1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?**

Bermuda largely follows the English position, and the successful party in the litigation usually recovers its “reasonable” costs in bringing or defending the action from the losing party. There are no specific rules on costs budgeting. Issues-based costs awards can be made which take into account the respective parties’ successes and failures on the issues litigated. Offers to settle and conduct of the proceedings are relevant factors that the court takes into account when making costs awards.

Costs can be awarded on the standard basis (presumption in favour of the payor) or the indemnity basis (presumption in favour of payee), dependent on factors including party conduct and any contractual entitlements to costs. In cases where costs are assessed on the usual standard basis, a successful party in civil litigation can normally expect to recover about 75% of its incurred costs.

**1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?**

Contingent and conditional fee arrangements are prohibited in Bermuda, subject to very few exceptions. Only lawyers who deal in undefended debt collections may enter into conditional fee arrangements, as set out in the Bermuda Barristers Code of Professional Conduct 1981.

**1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?**

A cause of action can ordinarily be assigned by written notice.

Third-party litigation funding is fairly common in Bermuda and there is judicial authority to support that such funding agreements are valid as a matter of Bermuda law.

**1.8 Can a party obtain security for/a guarantee over its legal costs?**

Order 23 of the RSC gives the court discretion to order a plaintiff to give security for costs in some situations, including: a foreign plaintiff; a nominal plaintiff suing in a representative capacity; where the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or the plaintiff has changed its address during the course of the proceedings with a view to evading the consequences of the litigation.

The Court of Appeal requires, as a condition of the appeal, the appellant to give security for the respondent's costs of the appeal.

## 2 Before Commencing Proceedings

**2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

For most actions, no particular formality is required prior to initiating court proceedings. However, in 2006 the court rules were amended to include the "Overriding Objective", which obliges parties to seek to save expense, deal with cases proportionately and allot cases to the appropriate share of the court's resources, while taking into account the need to allot resources to other cases. A letter before action is recommended in all matters, if possible, unless the court action is urgent or must necessarily be made foregoing the same.

**2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

The Limitation Act 1984 sets out the applicable limitation periods. For claims based on a simple contract, claims in tort and recovery of rents, the time period is six years. For claims based on a contract under seal, it is 20 years. Claims based on recovery of land and enforcing an arbitration award is 20 years.

Time periods usually run from the date of breach of contract or from the date of breach of duty of care in tort or equity, and a measurable and foreseeable loss has been sustained as a result of that breach. In defamation cases, the time period runs from the date of publication. If: (i) the action is based upon fraud; (ii) any fact has been deliberately concealed by the defendant; or (iii) the action is for relief from the consequences of a mistake, then the period of limitation does not begin to run until the plaintiff has discovered the fraud, concealment or mistake. For infants and persons who do not have capacity, time does not start to run until the age of majority or full capacity.

The court can potentially extend the limitation period, but only in respect of personal injury or death matters in certain circumstances.

Parties can agree to extend or exclude limitation periods. The Limitation Act 1984 is considered a matter of procedural law.

## 3 Commencing Proceedings

**3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?**

After a party has issued proceedings (which can be by writ, originating summons, originating motion or a petition) at the court registry, it has up to a year to serve the proceeding (which can be extended with permission of the court in some circumstances). It is the issuing party's responsibility to serve the defendant with the court proceeding.

Service on a company is at its registered office, by leaving a copy of the proceeding there. Every company incorporated in Bermuda must have a registered office where service can be made. Service on an individual defendant usually consists of them receiving a copy of the proceeding personally. If serving a defendant proves difficult or impossible, then an order for substituted service can be obtained by the court allowing the party serving to effect service by alternative methods, i.e. by email. An affidavit of service is usually produced to confirm and evidence the service.

Where a defendant has an attorney, the attorney may accept service and must endorse the proceeding (service is deemed to occur on the date of this endorsement). When a defendant enters an unconditional appearance in the action, service is deemed to have occurred on the date on which they enter an appearance.

If the defendant is not resident in Bermuda, an application to the Supreme Court must be made for leave to serve the defendant abroad. This long-arm jurisdiction is applicable if the claim falls within one of the listed categories contained in Order 11 of the RSC and the Supreme Court is satisfied that Bermuda is the appropriate forum for the action. An action which is served outside of Bermuda need not be served on the defendant personally, so long as it is served in accordance with the law of the country in which service is to be effected. Foreign service is evidenced by an official certificate by a British consular authority in the foreign country, by the government or judicial authorities of the foreign country or by any other authority designated in respect of the foreign country under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention") if applicable.

Bermuda, as a BOT, is subject to the Hague Convention. The UK ratified the Hague Convention on behalf of Bermuda. The Convention provides for the designation of a central authority (the Supreme Court in Bermuda) to receive requests for service coming from other contracting states and to execute them. The Convention allows a foreign litigating party to alternatively instruct a Bermuda attorney to effect personal service of foreign process in Bermuda. This method of service is likely to be quicker than through the designated central authority.

**3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?**

There are a range of pre-action interim orders in the Bermuda courts, including injunctions, search orders, disclosure orders and orders in respect of preserving and inspecting property.

The courts will usually apply the “just and convenient” test. A plaintiff may not make such an application before the issue of an action, except in the case of urgency or necessity.

Mareva injunctions (freezing injunctions) preserve property and assets. To succeed, the applicant will need to satisfy the court that: (a) there is a good arguable case against the respondent; (b) the refusal of the injunction would involve a real risk that a judgment or award in favour of the plaintiff would remain unsatisfied; and (c) it is just and convenient for the injunction to be granted. The plaintiff will usually be required to give a cross-undertaking for any damage caused by the interim relief if ultimately the court decides that such relief should not have been granted. Security in respect of the undertaking may also be required.

Anton Piller orders (search and preservation orders) are only issued exceptionally if there is: (i) an extremely strong *prima facie* case; (ii) the damage, potential or action, must be very serious; and (iii) clear evidence that the respondents have in their possession relevant documents or items and that there is a real possibility they may destroy such material before an *inter partes* application can be made.

Norwich Pharmacal orders (order for disclosure of documents or information against a third party) will be granted where an applicant can show: (a) a wrong carried out by an ultimate wrongdoer; (b) the need for such an order to enable an action to be brought against the ultimate wrongdoer, usually to identify them; (c) that it is just and convenient to make the order, usually by showing there is no other practical way of obtaining the information; and (d) the person or entity against which the order is sought must be mixed up in or have facilitated the wrongdoing and will be able, or likely to be able, to provide the information necessary for the wrongdoer to be sued.

### 3.3 What are the main elements of the claimant’s pleadings?

Order 18 of the RSC provides that every pleading must contain, and contain only, a statement in summary form of the material facts on which the party pleading relies for its claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

The relief or remedy sought must be stated specifically.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

A party may make limited amends to their pleadings once after they have been served on another party, before the pleadings are deemed closed (14 days after service of the defence, defence to counterclaim or reply). Any other amendments may be made by leave of the court.

### 3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

In an action begun by writ, a plaintiff can discontinue the action or withdraw any particular claim as against any defendant without leave of the court, if made no later than 14 days after service of the defence. A defendant may withdraw its defence without leave of the court at any time. A defendant can discontinue a counterclaim or withdraw any particular claim made therein no later than 14 days after service of the defence to the counterclaim.

If all the parties to any action consent, the action may be withdrawn without leave of the court.

In all other cases, a party may not discontinue an action or counterclaim or withdraw any particular claim made therein without the leave of the court.

Subject to any terms imposed by the court, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim is not a defence to a subsequent action for the same, or substantially the same, cause of action.

If a party discontinues or withdraws an action, they are likely to be held responsible for the other party’s costs incurred as a result.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The same provisions for a statement of claim, as detailed at question 3.3 above, apply to a statement of defence. In addition, a statement of defence must specifically plead any relevant statute of limitations or allegations that the claim is not maintainable.

A defendant in any action who alleges that it has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter. Where the defendant does so, they must add the counterclaim to the defence.

If a defendant claims a sum of money (whether an ascertained amount or not), it may rely on this in the defence and set off this sum against the plaintiff’s claim.

### 4.2 What is the time limit within which the statement of defence has to be served?

Fourteen days from receiving the statement of claim or counterclaim.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A defendant can claim against a third party any relief relating to or connected with the original subject-matter of the action by joining that third party as a party against whom a counterclaim is made.

A defendant (or plaintiff subject to a counterclaim or a third party subject to a third-party notice) can claim any contribution or indemnity against a third party not already a party to the action by filing and serving a third-party notice. Service of the third-party notice has the result of the third party becoming a party to the proceedings, with the same rights as a defendant in respect of filing a defence, counterclaiming, issuing additional third-party notices, etc.

### 4.4 What happens if the defendant does not defend the claim?

In a claim for a liquidated demand, the plaintiff may enter final judgment against the defendant (default judgment) for an amount not exceeding that stated in the writ, and costs.

In a claim for unliquidated damages, the plaintiff may enter interlocutory judgment against the defendant for damages to be assessed, and costs.

#### 4.5 Can the defendant dispute the court's jurisdiction?

Yes. Within 14 days of receipt, the defendant should apply to the court for leave to enter a conditional appearance and make the application challenging jurisdiction.

## 5 Joinder & Consolidation

#### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

See question 4.3 above.

#### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The court may consolidate proceedings where either: (i) some question of law or fact arises in both or all of them; (ii) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or (iii) for some other reason it is desirable to make such an order.

#### 5.3 Do you have split trials/bifurcation of proceedings?

The courts have flexibility under the court rules; different questions or issues may be ordered to be tried by different modes of trial, and one or more questions or issues may be ordered to be tried before the others.

## 6 Duties & Powers of the Courts

#### 6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

It is incumbent on a party to issue their action in the correct court jurisdiction. The Supreme Court has civil, commercial, family, probate and criminal jurisdictions. The Commercial Court determines “commercial actions”, meaning any claim or counterclaim arising out of the transaction of trade and commerce and includes any claim or counterclaim relating to: a business document or contract; the export or import of goods; the carriage of goods by land, sea, air or pipeline; the exploitation of oil and gas reserves or other natural resources; insurance and re-insurance; banking and financial services; the operation of markets and exchanges; the purchase and sale of commodities; the construction of ships; business agency; arbitrations; and includes any application under the Companies Act 1981.

#### 6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

After the pleadings are deemed closed, the plaintiff must take out a summons returnable in not less than 14 days for directions from the court.

Disclosure under the rules should take place within 14 days after the pleadings are deemed closed.

At the directions hearing, the court will fix the future directions and orders, including future hearing and/or trial dates.

For interim applications, see questions 1.8 and 3.2 above and questions 6.5 and 6.6 below.

For costs, see question 1.5 above.

#### 6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

The courts have adapted their processes, particularly in light of the impact of the COVID-19 pandemic, with the introduction of electronic filing and virtual court hearings. In October 2022, *Panacorp Casa De Valores S.A. v Castle Harbour Securities Limited* [2021] SC (39) Civ was the first trial in Bermuda to be conducted entirely by remote means, with witnesses appearing from Panama and the UK, and counsel appearing from Bermuda and the UK.

Hearings and trials are now routinely heard remotely. They are recorded by the court only, and it is a criminal offence to record any judicial proceedings without leave of the court; however, the parties can request audio of any hearing, which will be provided in short order. In certain circumstances, copies of video recordings can be requested and obtained if relevant to an issue in dispute.

Participants and witnesses are permitted to attend remotely. The courts accept electronic bundles, but usually require hard copies to be filed with them. Permission should be sought at the directions stage of any matter to file by electronic means, particularly in document-heavy cases.

#### 6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

See question 6.5 below, which may be applicable if a party refuses to comply with the court's directions and this amounts to an abuse of process. Disobeying court orders can lead to contempt proceedings.

#### 6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A claim or part of a statement of case can be struck out before trial if it fails to disclose a reasonable cause of action or is an abuse of the court's process. The court can make an order on its own volition at any time. A party can apply for such an order at any time.

#### 6.6 Can the civil courts in your jurisdiction enter summary judgment?

A plaintiff can obtain summary judgment against the defendant where it can establish that there is no defence to the claim (or part of the claim) and/or the defence is only as to the quantum of damages.

**6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

The courts can strike out an action – see question 6.5 above. Proceedings can be stayed for a variety of reasons including for the parties to explore settlement, until a previous order has been complied with, etc.

## 7 Disclosure

**7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?**

The RSC require parties to disclose all documents that have been in their possession, control or power relating to matters in question in the action, including those adverse to their case. For pre-action, see *Norwich Pharmacal* and *Anton Piller* orders described at question 3.2 above. For documents that do not require disclosure, see question 7.2 below. The RSC do not contain any detailed rules in respect of electronic discovery.

**7.2 What are the rules on privilege in civil proceedings in your jurisdiction?**

Please see the following:

- Legal professional privilege – information between a client and attorney.
- Litigation privilege – information between a client and their attorney and third parties for the purposes of litigation, including without-prejudice correspondence between the parties.
- Documents tending to incriminate or expose to a penalty the party who would produce them.
- Documents privileged on the grounds of public policy.

**7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?**

If such documents are required, it is ordinarily necessary to call a third party as a witness at trial and request that they bring such documents to the hearing. This can sometimes be arranged in advance of the final trial hearing. See question 3.2 above for *Norwich Pharmacal* orders.

**7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?**

The court can make an order for production or inspection of documents as between the parties. If a party fails to comply with a court order or direction in respect of discovery, then the court can strike out the proceedings.

**7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?**

Documents disclosed as part of discovery are subject to an

implied undertaking of confidentiality and against collateral use. Disclosed documents cannot be used outside of the proceedings unless the court grants leave.

## 8 Evidence

**8.1 What are the basic rules of evidence in your jurisdiction?**

Bermuda's common law and statutory rules of evidence in civil proceedings largely follow English law. However, the "hearsay" rule in Bermuda is more restrictive.

**8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?**

In principle, most evidence is usually admissible, with the court determining the appropriate weight to be given. Prejudicial evidence will not be admitted where to do so would be unfair to a party. Hearsay evidence is adduced by the service of a requisite notice, in advance of the trial.

**8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?**

Written evidence-in-chief is exchanged prior to a hearing and is affirmed live by a witness at the hearing, where they are usually subject to cross-examination. Cross-examination is not normally permitted before a hearing.

**8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?**

Expert evidence is permitted with the court's permission and the expert must be independent of the party instructing them. There are no particular rules regarding concurrent expert evidence. The expert's paramount duty is to the court, although professional duties are owed to the instructing party.

## 9 Judgments & Orders

**9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?**

The most common remedy sought is damages, compensating a party for its loss. Equitable remedies include specific performance, declaratory relief, rectification and rescission. Other remedies include, but are not limited to, an enquiry, an account of profits and an account of the actions of the defendant, i.e. breach of profits where a trustee acted in breach of their obligations. Statutory relief arises pursuant to actions taken under specific statutes, e.g. winding up a company on the basis of its insolvency or an order for the sale of a property's shareholding in a company where just and equitable relief is sought.

### 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The Magistrates' Court is a court of summary jurisdiction and a court of first instance for simple civil disputes under BD\$25,000 (BD\$1=US\$1). The Magistrates' Court cannot hear any actions for libel, slander, seduction, malicious prosecution, false imprisonment, rights in and over land and disputes concerning wills or settlements. The Supreme Court is the superior court of record and is the court of first instance in Bermuda for all civil and commercial disputes with a value in excess of BD\$25,000.

In addition to compensatory damages, exemplary damages may be awarded.

Both pre- and post-judgment interest can be awarded. Post-judgment interest is statutory and currently at 3.5%.

For costs, see question 1.5 above.

### 9.3 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgments can be enforced by: writ of *fiery facias*; garnishee proceedings; a charge against a party's real property; appointing a receiver over assets; and contempt of court proceedings.

Foreign judgments in respect of final monetary judgments from the Bahamas, Barbados, British Guiana, the Commonwealth of Australia, Dominica, Gibraltar, Grenada, Hong Kong, Jamaica, the Leeward Islands, Nigeria, St Lucia, St Vincent, and the UK can be enforced under the Judgments (Reciprocal Enforcement) Act 1968. All other foreign judgments must be enforced under the common law where proceedings are issued and summary judgment is sought based on the foreign judgment.

### 9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Generally, there is a right of appeal in relation to final orders. If the order is interlocutory or interim, then leave is usually required before a party can appeal. If the lower court refuses to grant leave to appeal, then leave may be sought from the appeal court. Leave is only granted if the appeal would have a real prospect of success or there is some other compelling reason.

A party in the Supreme Court has six weeks from the date of judgment to appeal and 14 days to seek leave to appeal if it is required. In the Magistrates' Court, the notice of intention to appeal is 30 days from delivery of the judgment and 14 days in respect of an interlocutory order. Appeals from the Court of Appeal to the JCPC must be made within six weeks in the case of a final judgment.

## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Alternative dispute resolution is not compulsory in Bermuda. However, parties can agree to explore settlement through mediation or other processes, and the courts will encourage parties to do so when appropriate.

## 11 Alternative Dispute Resolution

### 11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The two alternatives to litigation in Bermuda are arbitration and mediation (conciliation). Arbitration is more common than mediation.

### 11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The Arbitration Act 1986 applies to domestic arbitrations.

The Bermuda International Conciliation and Arbitration Act 1993 ("1993 Act") gives effect to the UNCITRAL Model Law on International Commercial Arbitration and applies to any international commercial arbitration in which the seat of the arbitration is Bermuda. The 1993 Act also provides a framework for mediation (referred to as "conciliation") in Bermuda.

### 11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

The Bermuda courts have exclusive jurisdiction for criminal law matters, insolvency and bankruptcy proceedings, most public policy matters and some aspects of family law.

### 11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The Bermuda courts are very supportive of arbitration and will strike out claims that are brought contrary to agreements to arbitrate.

The Bermuda courts provide limited assistance to arbitrations such as granting interim injunctions, appointing receivers, examination of witnesses on oath, securing the amount in dispute and the preservation and inspection of property.

Bermuda is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

### 11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

The Bermuda courts consistently enforce agreements to arbitrate.

Awards under the 1986 Act may be appealed on points of law to the Court of Appeal with leave of the Commercial Court. Under the 1993 Act, no appeals on points of law are possible, and arbitral awards may only be challenged in the Court of Appeal on the limited grounds set out in the New York Convention applicable to resisting enforcement of foreign arbitral awards.

There are no set sanctions for refusing to mediate.

Settlement agreements do not need to be sanctioned by the court in most cases.

#### 11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

In 1996, the Chartered Institute of Arbitrators (“CIARB”) was established in Bermuda. The CIARB Bermuda Branch has its own bespoke arbitration rules, last updated in 2019, which parties can adopt in any agreement to arbitrate, or after an arbitration has commenced.

The Bermuda Conflict Resolution Institute offers mediation services.



**Richard Horseman** is a Director in the Litigation Department of Wakefield Quin Limited.

Richard has significant experience advising clients in the following areas:

- commercial litigation, insolvency, corporate and shareholder disputes;
- judicial review and administrative law claims;
- personal injury claims; and
- trust and estate/probate litigation, as well as administration.

With over 18 years of litigation experience, Richard has conducted several high-profile cases and, in 2013, he won an award designating him Bermuda's most tenacious lawyer.

Richard is a past President of the Bermuda Bar Council, which regulates the conduct of attorneys in Bermuda. He was called to the Bermuda Bar of the Supreme Court in 1997. Richard obtained his B.A. in business management from Webster University in St. Louis, Missouri in 1988, and his LL.B. (honours) from the University of Buckingham in the United Kingdom in 1994. Richard placed in the top 1% of all law students in the United Kingdom who sat the Bar examination in 1995.

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**Cristen Suess** is an Associate in the Litigation Department of Wakefield Quin Limited.

Cristen regularly advises on all areas of matrimonial and family law, and she often appears in both the Family Division of the Magistrates' Court and the Supreme Court. Cristen's practice covers a variety of areas, including: divorce; marital agreements; maintenance; adoption; child paternity; surrogacy; and custody disputes. Cristen successfully represented the applicants in the first "Adoption via Surrogacy" in the Bermuda courts.

Cristen frequently coordinates a free Legal Advice Clinic through a local women's charity, providing advice to women in the community. In March 2019, Cristen was appointed a Human Rights Commissioner to adjudicate complaints upon referral to the tribunal.

Cristen obtained her LL.B. from the University of Leicester in 2012, and thereafter completed the Bar Professional Training Course in 2014 at City, University of London. She is a member of the Honourable Society of Lincoln's Inn.

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