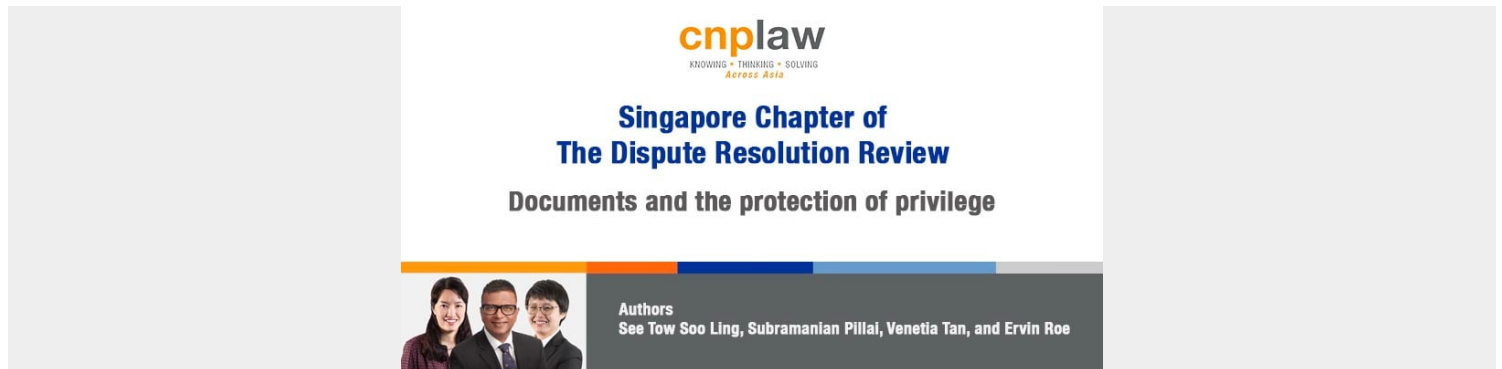


# DOCUMENTS AND THE PROTECTION OF PRIVILEGE

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#### i. Privilege

Generally, there are two kinds of privilege in Singapore between solicitor and client: legal advice privilege and litigation privilege.

Legal advice privilege is generally governed by Section 128 of the Evidence Act, which provides that nothing shall be disclosed that was given to an advocate or solicitor in the course of his or her employment. The rules that apply with regard to legal advice privilege extend to in-house lawyers by virtue of the recent amendments to the Evidence Act. It must be noted that there are circumstances in which privilege does not operate where communications are made in furtherance of an illegal purpose and where a solicitor becomes aware of a crime or fraud after engagement.

Litigation privilege is relied upon to protect information provided for the purpose of pending or anticipated court proceedings.

#### ii. Production of documents

Under Singapore law, a party to a court proceeding is under an obligation to make and serve on the other party a list of the documents that are or have been in their possession, custody or power. The list of documents has to be verified by an affidavit. The documents that may be ordered to be discovered are documents on which the other party relies or will rely, and documents that could affect his or her own case, adversely affect another party's case or support another party's case. This obligation to continue to give discovery remains until the conclusion of proceedings. Parties must also be aware that it is the duty of a litigant to preserve documents relevant to proceedings. Destroying documents could result in detrimental circumstances such as dismissal of the action or striking out the defence.

If a party is not satisfied with the documents provided in discovery, it may make an application under the Rules of Court for a document that the other party has or has not had in his or her possession, custody or power. This is often referred to as a request or application for specific discovery. In this regard, this could be broader than the general discovery obligations referred to in the preceding paragraph given that a party can seek a document that may lead to a line of inquiry which provides information that adversely affects its own case or the other party's case, or supports the other party's case. Even so, the court may find that the discovery is not necessary for disposing fairly of the cause or matter, or for saving costs.

The rules governing e-discovery are not set out in the Rules of Court, but are set out in the practice directions produced by the Singapore courts. The practice directions provide for parties to consider using e-discovery when a claim or counterclaim exceeds S\$1 million, where the documents discoverable exceed 2,000 pages, or where the documents discoverable substantially comprise electronic mail or electronic documents.

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