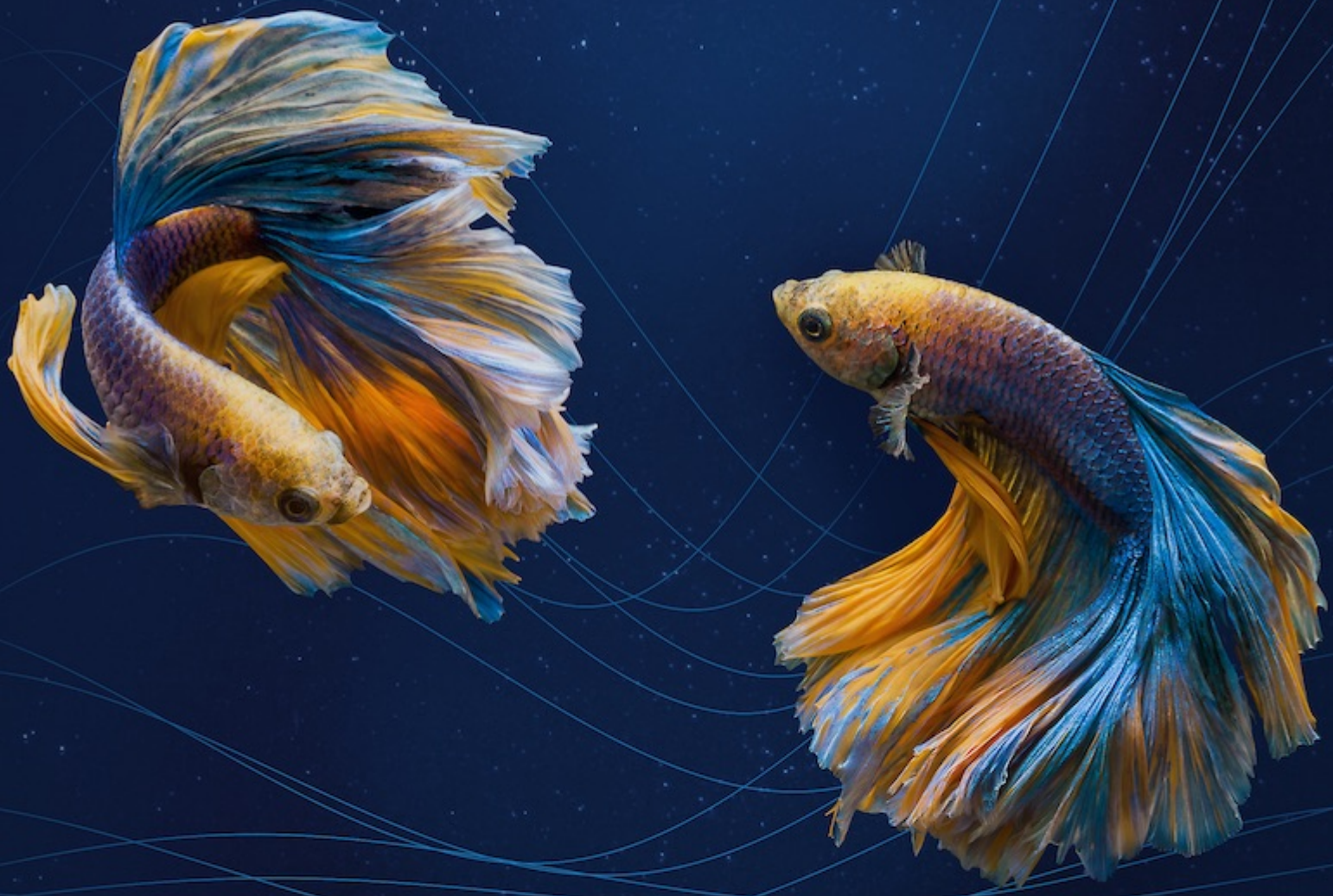
FULL HANDBOOK

Global litigation guide



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About

Welcome to The Global Litigation Guide (the **"Guide"**) which has been prepared by DLA Piper's civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper's guide to Legal Professional Privilege and (coming soon) DLA Piper's guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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Australia

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Overview of court system

Australia's courts operate under the common law legal system. Australia has a federal system of government, with legislative power divided between the federal branch of government and six state and two territory governments (for ease, we refer collectively to the states and territories as the state or states). Australia's courts are similarly divided into eight separate state jurisdictions and a federal jurisdiction, which each operate on a parallel but independent hierarchy of courts. Lower courts are bound by previous decisions made by higher courts in the same hierarchy. Decisions made by higher courts are persuasive, but not binding, on lower courts in a different hierarchy (for example, decisions made by the Federal Court do not bind a state District Court).

State and federal courts broadly have jurisdiction over the application of legislation enacted by the state and federal parliaments respectively. The High Court of Australia is the ultimate court of appeal in Australia for all court systems. There are also tribunals created by specific legislation under state and federal jurisdictions. Courts often have jurisdictional limits as to the types of matters, and quantum in dispute, that they will hear. A dispute over a small quantum cannot be commenced, at first instance, before a state Supreme Court.

Australia's official language is English. All Court proceedings will be conducted in English and judgments will be delivered in English.

Limitation

In each state or territory of Australia, specific legislation imposes a time period before the end of which proceedings must be commenced for a claim or dispute.

The specific legislation is:

- Limitation Act 1985 (ACT)
- Limitation Act 1981 (NT)
- Limitation Act 1969 (NSW)
- Limitation of Actions Act 1974 (QLD)
- Limitation of Actions Act 1936 (SA)
- Limitation Act 1974 (TAS)
- Limitation of Actions Act 1958 (VIC)
- Limitation Act 2005 (WA)

These time periods vary from state to state and depend upon the type of claim. A failure to issue proceedings before the relevant time period expires is likely to result in that claim becoming time barred.

In most Australian states, actions in simple contract or tort must be brought within six years of either the date of breach (contract) or the date on which loss was incurred (tort).

The limitation period may be extended in some circumstances, for example where someone with legal incapacity (such as a minor or a person of unsound mind) has entered into a contract. Some jurisdictions also permit for the limitation period to be extended at the court's discretion.

Procedural steps and timing

The process of litigation is broadly similar across Australian courts. Proceedings are initiated by a claim or application, which must be filed in the relevant court and by the initiating party on all parties to the proceeding. Parties will then exchange pleadings (such as statements of claim, defences, counterclaims, and replies) which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party. Timeframes for the progression of litigation are found in the civil procedure rules applicable in each jurisdiction. Generally, a defence must be filed within 28 days of service of a statement of claim.

For proceedings in the Federal Court, parties are required to file a genuine steps statement, which outlines the steps taken to make a sincere and genuine attempt to resolve the dispute prior to commencing litigation. Superior courts in the states may also require a party to litigation to provide details of attempts made to resolve a dispute before proceedings were commenced.

Once the exchange of pleadings is complete, parties will generally undertake the discovery (also known as the disclosure) process, and then go on to prepare their evidence for a final hearing of the dispute. It is common, particularly in complex litigation, for the parties to be obliged to attend court at regular intervals for directions hearings, in which orders are given to manage the conduct and timeframes of the case up until its final hearing.

Timeframes for each stage of proceedings vary greatly with the complexity and case management style of an individual matter and the specific jurisdiction in which the case is commenced. Each superior court in the states has in place specific practice notes or directions for the conduct of commercial disputes with the aim of ensuring that those commercial disputes are resolved in the most cost-effective and time-efficient manner possible. Generally, across all jurisdictions, parties will have 28 days from receipt of a claim to put on a defence. As noted above, the timetable from that point of time will depend on the nature of the dispute.

A straightforward commercial contract dispute will normally, court resources permitting, be resolved within 12 months.

Most state and federal courts require a corporate entity to be represented by a lawyer (which could include a lawyer employed by a company). Some jurisdictions dealing with small claims/employment issues may allow a company to appear by its director. Individuals may appear on their own behalf in most jurisdictions without a lawyer.

Disclosure and discovery

In Australia, the discovery process is designed to allow parties to civil litigation to obtain from an opponent all documents relevant to the issues in dispute. Australian courts strictly prohibit "fishing expeditions" through discovery. Discovery is usually undertaken after the close of pleadings (although in some courts in some states this may not be permitted until after evidence is complete) when the points of dispute between the parties have crystallized. Discovery may however be ordered, in limited circumstances, prior to the commencement of proceedings where an applicant is able to satisfy the court that he or she needs to obtain discovery in order to find out whether or not a cause of action exists against a potential defendant.

The practice of disclosure varies between those jurisdictions which mandate a general right of discovery and those in which the right is more limited. In the Northern Territory and the states of South Australia and Queensland, parties have a mandatory duty of disclosure which is discharged by the exchange of lists or copies of discoverable documents. In Tasmania, Victoria and Western Australia, a party may, by written notice to another party, require that party to make general discovery. In the Federal Court of Australia and New South Wales, the right to discovery is limited and requires an order of the court and will usually be limited to specific categories.

There have been recent attempts by some of the states' superior courts to more tightly control the disclosure process. For example, the preparation of disclosure plans (which identify the categories of documents to be disclosed and how they will be disclosed), and the courts ordering that discovery being provided after the exchange of written evidence with a view to limiting the number of documents to be exchanged.

In the Federal Court and most state courts, discovery can be ordered to be made by non-parties to the dispute where the court is satisfied as to the likelihood of the non-party having relevant documents. Courts in Australia will also generally permit the issuing of subpoenas to produce documents to non-parties to litigation and this process will be more straightforward than seeking non-party disclosure orders.

Default judgment

Default judgment can be applied for in proceedings in any court where a defendant does not:

- file a defence within the specified timeframe after a statement of claim has been served; or
- fails to make an appearance at a hearing.

A default judgment is not a judgment on the merits of the claim, but rather a sanction for a party's failure to comply with the rules or orders of the Court. Once a default judgment is ordered against a defendant, a defendant can, in limited circumstances, seek to challenge the granting of that default judgment. The defendant will need to file an application or motion to set aside the default judgment within a specified period of time and show cause for why (usually lack of notice of the claim or that notice was given of intent to defend but that notice was not brought to the attention of the court which granted the default judgment) the judgment should be set aside.

Appeals

Judgments of civil courts in Australia can be appealed to a superior court. An appeal does not suspend the effect of the judgment being appealed, except in so far as a court having jurisdiction in the matter may direct. Civil procedure legislation in each jurisdiction sets out the rules and procedure for appeals. Ordinarily, it will be necessary to seek leave from the superior court to appeal. The Court of Appeal in each state, and the Full Federal Court, are the ultimate courts of appeal for each of those jurisdictions. Cases that emanate from the Federal Circuit Court are appealable to the Federal Court and then the Full Federal Court, whereas matters emanating from a State Magistrates Court are appealable to the Supreme Court and the Court of Appeal. Decisions made by the District Court (County Court in certain states) are appealable to the Supreme Court and decisions of the Supreme Court can be appealed to the state's Court of Appeal. The High Court of Australia hears appeals from courts of appeal (sometimes referred to as the full court) in all jurisdictions, and has limited original jurisdiction (which predominantly relates to constitutional matters).

Parties generally, depending on the jurisdiction, have 28 days from the date of judgment or final order, to lodge an appeal in a civil matter to the relevant appeal court. Appeals will generally, because of the limitation of introducing new evidence in most civil appeals, be resolved more quickly than matters at first instance. Most appeals of civil matters will be heard and judgment given within six to eight months from commencement of the appeal.

Interim relief proceedings

All superior Australian courts have a wide power and discretion to grant both interlocutory orders and interlocutory injunctions. An interlocutory application, generally speaking, is an application which seeks any order other than a final judgment.

As in other jurisdictions, interlocutory injunctions are a species of interlocutory orders. Where those orders are sought on an urgent and temporary basis until a more extended form of relief is sought, they are often referred to as interim orders.

Interlocutory orders (including interlocutory injunctions) can require a party to undertake or refrain from a particular act, and can be granted before proceedings have commenced, once they are on foot and after judgment has been entered. Applications for these types of orders may be made by self-represented litigants or through legal representation.

The categories of non-urgent interlocutory orders that an applicant may seek are many and varied and include, by way of example, applications for security for costs, discovery (including preliminary discovery before proceedings have been commenced), the filing of expert evidence or orders for particulars. The evidence required to obtain non-urgent interlocutory orders will turn on the type of orders sought, although at the very least substantive interlocutory applications usually require a sworn affidavit to be filed.

The kinds of relief that can be sought by way of an urgent interlocutory injunction are equally varied. This is because the orders have the purpose of preserving the status quo until the rights of the parties can be determined finally, and the types of matters that can be heard by the court are vast. Common urgent interlocutory injunctions include applications for the preservation of property, the freezing of assets and applications to search premises to preserve evidence.

An applicant for an interlocutory injunction (either urgent or not) must prove that:

- there is a serious question of law to be tried;
- the balance of convenience favours the granting of the injunction; and

- an award of damages (at the conclusion of the proceeding) would not be an adequate remedy.

It is possible for urgent interlocutory injunction applications to be heard by the court ex parte, without the opposing party's involvement. Any orders given ex parte will generally operate only for a limited period of time until the matter can be brought to a hearing. The duration of any ex parte order will ordinarily be limited to a period terminating on the return date of the summons, which should be as early as practicable (usually not more than a day or two) after the order was made, when the respondent will have the opportunity to be heard. For this reason appeals of ex parte interlocutory injunctions are not usually made to a superior court. The applicant will then bear the onus of satisfying the court that the order should be continued or renewed. A party seeking an interlocutory injunction will ordinarily be obliged to give an undertaking to pay any damages by the defendant suffered as a result of the injunction in the event that the claim for final relief at trial fails.

The decision to grant an interlocutory injunction can be on an urgent basis to a relevant appeal court. The appeal court will usually list the matter before a single judge to assess the urgency (often the same or the day following the day on which the appeal is lodged) and set a timetable based on the information provided at that first listing.

Prejudgment attachments and freezing orders

Australian state and federal courts can grant interim freezing orders, which restrain a defendant from disposing of property prior to judgment. These orders are a species of interlocutory orders. Such applications may be filed at the Supreme Court or Federal Court. A freezing order is normally obtained ex parte without notice to the respondent, before service of the originating process, because notice or service may prompt the feared dissipation or dealing with assets. A freezing order or an ancillary order may be limited to assets in Australia or in a defined part of Australia, or may extend to assets anywhere in the world, and may cover all assets without limitation, assets of a particular class, or specific assets. It would therefore be possible for a freezing order to encompass bank accounts as well as assets such as real property, art, securities or motor vehicles. Such orders would, however, normally allow for access to funds for reasonable expenses, living costs and payments in the ordinary course of a defendant or third party's business. A court may also order a freezing order against a third party, where it can be established that there is a risk that a judgment or prospective judgment may be unsatisfied as a result of a third party's power, possession or influence over the assets in question. The power to issue a freezing order is a function of courts' authority to prevent an abuse of the court process by the frustration of court-ordered remedies. A freezing order will be made only to preserve the status quo for the purpose of resolving a substantive cause of action brought by the plaintiff, and not as a stand-alone remedy.

The criteria for the issue of a freezing order is similar to the ordinary principles for the grant of interim relief, as discussed above, although the potentially serious impact on a defendant's property rights raises the threshold for the granting of a freezing order. This may be overcome by an undertaking as to damages given by the applicant of the freezing order, where the applicant undertakes to submit to such order (if any) as the court may consider to be just for the payment of compensation (to be assessed by the court or as it may direct) to any person affected by the operation of the order. The High Court of Australia described freezing orders as '"a drastic remedy which should not be granted lightly". Broadly and generally, an applicant must show that:

- the applicant has a good arguable case (in the substantive cause of action);
- the refusal of a freezing order will give rise to a real risk that any judgment pronounced in the action will remain unsatisfied, or that the recovery of any judgment will be prejudiced by reason of the removal by the defendant of assets from the jurisdiction, or their dissipation within it; and
- the balance of convenience favours the making of the order.

Costs

Australian courts have wide discretion to award costs orders against either party to cover the opposing party's costs of litigation. The general rule is that costs follow the event. This means that the unsuccessful party will be liable to pay the litigation costs of the successful party. The aim of this rule is to achieve a just outcome by shifting the costs burden on to the party which is found to have either unjustifiably brought another party before the court or given another party cause to have recourse to the court to obtain their rights.

Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect

the litigants' relative success and failure. Courts may depart from the general rule by requiring a successful party to bear their own costs where there is good cause to do so. Such an outcome may be justified where, for example, a successful plaintiff is awarded only nominal damages, or a party succeeds only due to late and substantial amendments to their case.

Of particular strategic importance is the rule that generally a court will not award costs to a successful party which has obtained relief no more favourable than had already been offered by his or her opponent in settlement discussions. This rule is designed to encourage the early resolution of litigated disputes.

Costs orders are subject to a costs assessment process administered by the courts. It is unusual that a party will be able to recover all of its actual legal costs through this process. On a standard assessment, parties may recover approximately 60% to 75% of their actual costs. A higher rate of assessment, on an indemnity basis, may be employed where a party has engaged in unreasonable conduct in the proceeding.

All courts in Australia will charge fees for commencing civil proceedings (often referred to as a filing fee). Some jurisdictions, particularly superior courts, will also charge additional fees including but not limited to daily hearing fees (calculated by reference to the length of the trial), filing fees for notices of motions/applications and the issuing of subpoenas to third parties. These fees are set by the courts and are published on their websites. They are usually reviewed on a yearly basis. By way of example, the current rate (effective from 1 July 2023) for commencing proceedings in the Federal Court of Australia is AUD4,760 for corporations and the daily hearing fee for corporations can range from AUD3,180 (for the first four days) and AUD16,945 (for the 15th and subsequent days).

Class actions

In all Australian jurisdictions, a representative proceeding, or class action (as it is more commonly known in Australia) may be commenced by or against any one person as a representative of numerous persons (the minimum number required is generally seven people) who have the same interest in the proceeding and the claims brought give rise to a substantial common issue of law or fact. It is possible to commence a class action against multiple defendants and there is no requirement for every group member to have a claim against every defendant.

An overarching consideration of the courts in hearing a representative proceeding is whether it involves less delay, expense, and prejudice to the parties than alternative forms of trial. If not, the court may discontinue the proceedings.

The Federal, New South Wales, Victorian and, most recently, Queensland jurisdictions contain further statutory provisions in relation to representative proceedings, which are arguably more liberal and plaintiff-friendly than other jurisdictions. These jurisdictions allow representative proceedings to be brought where seven or more people have claims which arise out of the same or related circumstances and give rise to a substantial common issue of fact or law. Over 90% of all class actions filed in Australia from 1992-2009 were filed in the Federal Court of Australia.

When a representative proceeding is commenced, all potential plaintiffs who fall within a class become members of the class, whether they are aware of the claim or not. Members can then opt out of the proceedings before a date set by the court. All class members who do not opt out will be bound by the judgment of the court or by any approved settlement.

It is important to note that, although some states have yet to formally abolish the law of champerty and maintenance, outside of the US, Australia has one of the most developed class action industries, with a variety of large, class action plaintiff law firms and with many litigation funders having been active in the jurisdiction for over 20 years. This active funding industry has seen a continued increase in the number of class actions being commenced in Australia.

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Austria

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Overview of court system

Austrian courts operate under the civil law system. This means that the majority of substantive and procedural laws are codified in legal statues which take precedence over case law. Although case law is not legally binding, it has persuasive authority, and lower courts are bound by the decisions of higher courts.

The Austrian court system comprises 116 District Courts (*Bezirksgerichte*) as well as 20 Regional Courts (*Landesgerichte*). The District Courts and Regional Courts are both courts of first instance, but their jurisdiction to hear matters depends on the quantum of the claim and the subject matter in dispute. Second instance courts can be either Regional Courts, (referred to above) or one of the four Higher Regional Courts (*Oberlandesgerichte*). For civil proceedings, the final court of appeal is the Supreme Court in Vienna (*Oberster Gerichtshof*).

Specialized courts are established to deal with matters relating to commercial law, antitrust law, labor and social law. These special courts are either divisions within the above-mentioned courts or are self-standing special courts, such as the Labor and Social Court (*Arbeits-und Sozialgericht*) in Vienna.

The official court language in Austria is German. In addition, the minority languages Croatian, Slovenian and Hungarian are official languages in some regions of Austria.

Limitation

In general, under Austrian law, limitation periods run from the first day on which the claimant could have brought the matter to court. In terms of duration, Austrian law distinguishes between long and short limitation periods. Unless statutory law provides for a shorter limitation period, long limitation periods of 30 years are the default. Short limitation periods are generally three years. For reasons of legal certainty, the 30-year periods are absolute.

With regards to time limits (for instance, limitation periods or preclusion periods), Austrian law draws a distinction between the time limits applicable to substantive and procedural law matters respectively. The rules for the calculation of time limits in respect of substantive law matters are laid down in the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). They apply, inter alia, to time limits that result from unilateral legal acts, and to statutory time limits, such as limitation periods or preclusion periods. However, there are also specific limitation periods which displace those set out under the Austrian Civil Code, e.g. within the framework of capital market law, the limitation period for bringing a claim is ten years after completion of the offer, which is subject to prospectus requirements. The ten-year limitation period under capital market law is absolute and applies regardless of the knowledge of the claimant.

Procedural steps and timing

Civil proceedings are generally initiated by a statement of claim (*Klage*) which must be filed with the competent court via an electronic filing system (WebERV). In certain circumstances, claimants must be represented by an attorney. Such circumstances are:

- first instance proceedings at the Regional Court level;
- district court proceedings involving an amount in dispute exceeding EUR5,000; and

- appeal proceedings.

After the statement of claim is filed, the court will decide whether it has jurisdiction to hear the case. If the court considers the claim admissible, it will serve the statement of claim on the defendant and order it to file a written statement of defense within four weeks. The written statement of defense defines the scope of the subject matter and the specific issues in dispute. A written statement of defense is, however, not required in proceedings of first instance before a District Court.

Once the exchange of pleadings is complete, the court usually summons the parties to a preliminary hearing (*Vorbereitende Tagsatzung*) within the next few weeks or months. In this preliminary oral hearing, the parties discuss the facts of the case and try to reach a settlement. The court may issue a judgment and close the proceedings after the preliminary hearing. However, usually, there are subsequent evidential hearings, the number of which depends on the scope and complexity of the case. The dates of such hearings are usually agreed between the parties and the judge at the preliminary hearing.

The claimant is allowed to withdraw its claim without a waiver of claims before the defendant submits its statement of defense. Once the statement of defense has been filed, the claim may only be withdrawn with the consent of the defendant(s). However, if the claimant is willing to waive its claims, it may seek to discontinue the proceedings at any time before the trial or oral hearings are closed. The main consequence of such a discontinuance would be that the claimant must pay all costs already incurred in the proceedings.

Monetary claims not exceeding EUR75,000 must be pursued in the form of a so-called default action (*Mahnverfahren*). If the claim meets the necessary conditions to be classed as a default action, the court will issue a conditional order for payment (*Zahlungsbefehl*) without hearing the defendant's case. The defendant then has the right to submit an objection within four weeks, otherwise the conditional order for payment will become legally binding. Providing the objection is raised within the specified timeframe, the payment order will become invalid and ordinary civil proceedings will be initiated.

Timeframes for each stage of proceedings vary considerably depending on the complexity of the case as well as the court and the parties' availability. The court will exercise its case management powers to determine the procedure and timetable for the proceedings. The average duration of civil proceedings is around nine months in the District Courts and 17 months in the Regional Courts.

The parties can, at any stage, agree to suspend (or stay) the proceedings. In this situation, they must jointly notify the court. The reasons for an agreed suspension can vary. For instance, parties may choose to stay proceedings to facilitate settlement negotiations or because a settlement has been reached. Save in the event of an agreed settlement, the proceedings can be resumed (i.e. the stay lifted) upon the request of either party after a minimum three month period. It is also possible for the parties to agree on a permanent suspension. This is regarded by the courts as a material waiver by the parties, which means that the proceedings cannot be resumed.

Disclosure and discovery

The Austrian Code of Civil Procedure (*Zivilprozessordnung*) lists the following five types of evidence:

- documentary evidence;
- witness testimony;
- expert evidence;
- inspections; and
- the hearing of the parties.

Each party must offer all evidence necessary to substantiate the statements included in its respective pleadings. Documentary evidence is normally adduced to the court by the submission of the document and a reference made to it in the party's written or oral argument. The Austrian Code of Civil Procedure is based on the legal principle of the free evaluation of evidence (*Freie Beweiswürdigung*), which means that Austrian courts enjoy wide discretion as to how they assess the submitted evidence. The court may not, however, admit evidence that it considers irrelevant to the matters in dispute, or which appears to have been submitted with the intention of delaying the proceedings.

During proceedings, a party may ask the court to order the other party to disclose a particular document in its possession so that it can be relied on as evidence in the proceedings. In the context of discovery requests, evidence may be obtained by the court ex parte.

The requesting party must state the contents of the requested document as precisely and completely as possible, and indicate all facts and matters which are to be proven by the document. The requesting party also must prove that the document is in the possession of the opposing party. A distinction is made between joint documents and other documents. A joint document is drawn up in multiple people's

interests or records mutual legal relations. If the court orders that a joint document be disclosed, the obligation to present the document is final and cannot be avoided by the opposing party. If the document in question is not a joint document, the party opposing disclosure may refuse to present the document by invoking one of the grounds for refusal listed in Section 305 of the Austrian Code of Civil Procedure, e.g. if the content concerns matters of family life, if the disclosure of the document would be disgraceful to the party or third parties or would involve the risk of criminal prosecution, etc. The refusal to present a document can also be justified in specific circumstances, such as where it contains commercially sensitive information.

On the other hand, Section 304 of the Austrian Code of Civil Procedure lists certain grounds which, if present, are determinative in favor of disclosure, e.g. if the party opposing disclosure has referred to the document in the proceedings, committed itself under civil law to deliver or present the document, or if the document concerned is a joint document.

In accordance with the jurisprudence of the Austrian courts, no discovery / disclosure process exists. Further, even evidence obtained through illegal means is, in principle, admissible in proceedings, save where it was obtained in violation of constitutionally guaranteed fundamental rights.

Default judgment

If the defendant does not appear at the first oral hearing or file its statement of defense on time, the claimant can request a default judgment. In such circumstances, the remedies sought by the claimant will be granted unless the court considers them to be clearly unreasonable. The defendant can appeal within fourteen days after it has been notified of the judgment.

The court does not examine the merits of the claim. However, the court will not give default judgment if it deems that:

- a procedural requirement has not been met;
- the claim is inconclusive;
- the service of summons or the order to answer is not proven;
- a party has been prevented from performing the procedural act due to unavoidable events, e.g. due to natural disasters; or
- the appearing party cannot immediately provide evidence of a circumstance to be taken into account ex officio.

Appeals

Unless a dispute is settled, proceedings usually end with a judgment (*Urteil*). Judgments are final decisions on the subject matter of the dispute and deal with material legal issues raised in the parties' written statements and the oral hearings. The written judgment will be distributed to the parties. Generally, parties will have four weeks after notification of the judgment to file an appeal against it. A judgment may be appealed on points of fact, law, or procedure. If the judgment is handed down in writing, the four week period for bringing an appeal starts to run from the day following the handing down. Oral judgments are very rare. If, however, the judgment is issued orally at the end of the hearing and in the presence of both parties, the party wishing to file an appeal must enter a notice of appeal either:

- orally immediately after the judgment is pronounced; or
- in writing within two weeks calculated from the day following service of the transcript of the hearing.

The jurisdiction of the appellate court depends on whether the appeal was made against a decision of a District Court or a Regional Court. First instance judgments given by the District Courts can be appealed to the Regional Courts, whereas first instance judgments given by the Regional Courts must be appealed to one of the four Higher Regional Courts. Appeals against first instance judgments and some appeals against second instance judgments have suspensive effect.

Not all cases can be appealed to the Supreme Court. Only legal questions of considerable importance can be referred to the Supreme Court. There are also restrictions relating to the amount in dispute. The second instance court has jurisdiction to decide whether a matter can be appealed a second time, i.e. to the Supreme Court. An appeal to the Supreme Court usually requires a case to contain a legal question of considerable importance to ensure legal unity, security, and development, as well as an amount in dispute of more than EUR5,000. If the court declines the opportunity to appeal for a second time, there is still an opportunity to file an extraordinary second appeal to the Supreme Court. An extraordinary second appeal requires an amount in dispute of more than EUR30,000 or the dispute to

be of a particular nature, such as family law or labor and social law. Second appeals must be filed within four weeks from the date of the appeal decision. Appeals are typically resolved within four to six months after the appeal of the first instance judgment is filed. Supreme Court decisions might take up to 12 months.

On appeal, no new claim or other objection may be raised. The parties may only submit new facts in the first instance. The appeal proceedings are limited to a review of the facts and submissions of the parties up to the end of the first instance proceedings. As such, the Supreme Court's jurisdiction is purely legal in nature.

The resolutions of a court (*Beschlüsse*) can also be appealed. These resolutions are not judgments and typically concern the conduct of the proceedings and procedural issues. The appeal must be brought against resolutions of the competent court of first or second instance within 14 days of the relevant resolution generally, but some appeals against special resolutions of the court can be made within four weeks of the relevant resolution.

Interim relief proceedings

Austrian law essentially provides three categories of interim (or temporary) relief measures:

- preventive measures, which are granted to secure the enforceability of an eventual judgment and may involve freezing a particular state of affairs or assets;
- regulatory measures, which are granted to regulate a temporary state of affairs; and
- performance measures, which provide a temporary performance of an alleged obligation.

However, this categorisation is of little practical importance. Despite specific provisions in certain legislation such as the Patent Act, the Copyright Act or the Trademark Act, interim relief measures are principally regulated by the Enforcement Act (*Exekutionsordnung*), which distinguishes between:

- execution for security; and
- interim injunctions.

Execution for security refers to the execution of an interim measure on the condition that the applicant pays security into court covering any potential damages to the respondent. To grant execution for security:

- the court must have issued an existing judgment, which will be the basis for execution;
- the claim must be a monetary claim; and
- the court must be convinced that:
  - without the execution for security, the enforcement of the monetary claim would be thwarted or considerably impeded; or
  - the judgment would most likely need to be enforced in states or another foreign jurisdiction in which the enforcement of the claim is not guaranteed either by international treaties or by Union law.

Interim injunctions are types of preventive measures granted to ensure immediate legal protection before, during or after trial. There are three types of interim relief injunctions, namely those for the purpose of securing:

- monetary claims;
- other claims; and
- a right or a legal relationship.

For further detail on interim injunctions, see below section on Prejudgment attachments and freezing orders.

Injunctive relief proceedings are commenced when one of the parties applies for injunctive relief at:

- the court where the substantive proceedings are pending; or
- where an injunctive measure is sought prior to the commencement of substantive proceedings, the District Court of the domicile (*Allgemeiner Gerichtsstand*) of the defendant.

The application will usually be accompanied by supporting evidence (evidence may be merely cited in the application but parties generally enclose it to avoid any delay in having to provide it subsequently). In specialized legal matters (family law disputes, labor and social law disputes, etc.), interim proceedings may also be initiated and granted ex officio.

For injunctive relief to be granted, the applicant must demonstrate that:

- it has a prima facie claim, and for this purpose, the applicant will need to (i) include precise allegations regarding their claim in the application; or (ii) where the application and the lawsuit are filed at the same time, refer to such precise allegations in the main lawsuit; and
- their claim risks being frustrated if no injunctive relief is granted by the court.

If the court considers that (i) the above requirements (along with other formalities) are satisfied; and (ii) granting injunctive relief would (a) be proportionate; and (b) not result in an irreversible state of affairs, the court will order the injunctive relief sought by the applicant. Further, the court may order that injunctive relief is made conditional on the applicant's payment of security into court.

The procedure for issuing injunctive relief is not public and, in principle (unless the claim relates to civil rights), will be conducted without hearing the opposing party. However, as the opposing party has the right to object to the court's decision once the injunction has been granted, the court will usually serve the application on the opposing party in order to avoid a subsequent opposition (provided that notice will not lead to a delay likely to defeat the purpose of the injunction). If notice has been given, the opposing party may reply to the application within a short deadline set by the court (usually ranging between three days to two weeks).

Generally, injunctive relief is granted within one week of the application, although in relation to urgent matters, the court can grant interim relief within two or three days.

The respondent can appeal against decisions of the court within fourteen days after the service of the order granting the interim measure. In general, interim measures do not have suspensive effect unless specifically granted by the court.

The costs of interim relief proceedings have to be advanced by the applicant. However, the applicant may be reimbursed for such costs by the opposing party if the applicant is successful in the main proceedings.

In certain circumstances, usually when the amount in dispute exceeds EUR5,000, legal representation is mandatory. If represented by an attorney, the application for injunctive relief must be submitted to the court in writing. Otherwise, the application may be made orally, and a transcript will be taken.

Prejudgment attachments and freezing orders

Austrian courts may grant interim relief measures equivalent to prejudgment attachments and freezing orders.

Preventive injunctions

As noted in the section above on Interim relief proceedings, Austrian courts may grant a series of preventive measures to secure the enforceability of an eventual judgment, which may involve freezing a particular state of affairs or assets.

Like other interim injunctions, they can be sought prior to the commencement of proceedings, during proceedings or after trial. The competent court to hear such an application is the court where the substantive proceedings are pending or, when such a measure is sought pre-action, the competent court is the District Court of the domicile (*Allgemeiner Gerichtsstand*) of the respondent.

In addition to the requirements for injunctive relief specified in the section above on Interim relief proceedings, preventive interim injunctions for monetary and non-monetary claims may be granted when:

- it is probable that without the requested measure the respondent would thwart or considerably impede the enforcement of a claim (e.g. by damaging, destroying or relocating assets); or
- the respondent has no assets in Austria, and enforcement is not guaranteed by European or international law.

In addition, for monetary claims, the applicant will need to prove its:

- entitlement to the claim; and
- interest in the disposal of the claim.

Parties may request the following preventive injunctions in respect of monetary claims:

- the deposit or administration of movable goods by the court;
- the prohibition on the disposal or pledging of movable assets;
- the prohibition on third parties from providing payments to a person;
- the administration of a property; and
- the prohibition on the disposal and pledging of property or certain rights arising from a registration in the Land Register; and

In respect of a non-monetary claim, there is no exhaustive list of measures. Accordingly, the court may order all the above as well as orders requiring:

- the applicant to retain custody of the respondent's property / asset, or;
- the respondent to take action to preserve the property / asset or prohibit him from taking actions that may adversely affect such property / asset.

In the majority of cases, decisions on applications for preventive injunctions occur in ex parte proceedings (i.e. without notice to the respondent).

The application for a preventive injunction must contain:

- the names of the parties concerned;
- the facts establishing the court's jurisdiction;
- the legal basis as to why the injunction is requested;
- the legal interest of the party seeking the injunction;
- the form of the requested interim relief; and
- the desired duration.

There is no specific timeframe in which the substantive claim should be brought. The preventive injunction is granted by the court for a certain period of time. After the expiry of this period, the preventive injunction ceases to apply. The creditor can be held liable for any damage suffered by the debtor if the court subsequently finds that the relevant preventive injunction was unjustified.

Preventive taking of evidence

In addition, orders attaching the respondent's assets or freezing bank accounts may also be granted following an application for the preliminary taking of evidence. These are types of interim injunctions seeking to prevent the loss, or difficulties regarding the use, of evidence or if the availability of the evidence is uncertain.

In the application, the applicant is required to identify:

- the opponent;
- the facts on which the taking of evidence is to be based;
- the evidence the applicant is seeking to be secured;
- the witnesses to be heard and any experts proposed; and
- the reasons for the application.

The application is usually filed with the court hearing the main proceedings. However, in urgent cases and / or if a legal dispute has not yet commenced, the application should be filed with the District Court where the object to be attached is located. In the case of a freezing order, the local jurisdiction shall be determined by reference to the seat of the credit institution that holds the assets to be frozen.

Costs

The Austrian civil procedure law provides a system of cost reimbursement. The unsuccessful party is required to reimburse the costs of the prevailing party; however, this is limited to costs that are necessarily incurred. The procedural costs are divided into court fees (which include the fees and expenses of witnesses, court-appointed experts and court interpreters), legal fees (e.g. fees of legal representation) and party expenses (which predominantly consist of travel expenses and loss of earnings due to attendance in court).

Court fees are subject to the Court Fees Act (*Gerichtsgebührengesetz*) and calculated on a graduated scale in accordance with the amount in dispute. Moreover, the costs depend on the court where the proceedings are pending. In cases involving amounts in dispute exceeding EUR350,000, court fees for first instance proceedings are 1.2% of the amount in dispute, plus EUR4,203. Court fees for appeal proceedings are calculated separately but are also based on the amount in dispute. The unsuccessful party is obliged to reimburse the court costs, but only to the degree prescribed in the Attorneys' Fees Act (*Rechtsanwaltstarifgesetz*).

As an exception to the principle that the unsuccessful party is to pay the procedural costs, the court can, in certain circumstances, also oblige one party to bear the costs of the entire proceedings or of a certain phase of the proceedings, regardless of whether that party was successful.

Class actions

Austrian law does not provide for a civil legal procedure comparable to “class actions”. The most important form of collective redress in Austria is a concept called “collective actions Austrian style” (*Sammelklage österreichischer Prägung*). This can either be commenced by an association that promotes the interest of a group of persons suffering damages, such as consumers or employees, or by several claimants who have the same interest in the proceedings. There is no limitation to a particular area of the law. The same interest does not need to arise out of the same action or transaction, but requires a shared interest in the determination of some question of law or fact. In contrast to the class action system in the US, Austrian claimants must take positive steps to get involved in a class action. The entitled parties assign their claims to an association or another legal person, which asserts the individual claims in a collective, comprehensive claim. On this basis, Austria operates an “opt-in” collective redress mechanism.

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Bahrain

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Overview of court system

The Kingdom of Bahrain operates under a civil law system with Civil Courts and Shari'a Courts. As such, there is no system of binding judicial precedent. All proceedings are conducted in Arabic and all non-Arabic documents submitted in proceedings must be translated.

The Civil Courts are authorized to settle all commercial and civil cases, as well as all cases involving disputes related to personal status (i.e. issues related to marriage, child custody, alimony and inheritance) of non-Muslims. These courts have a four-tier system:

- the Court of Minor Causes and Court of Execution;
- the High Court;
- the High Court of Appeal; and
- the Court of Cassation.

The Court of Cassation is the highest civil judicial authority in Bahrain.

It is common for these courts to appoint experts to assist them in relation to a variety of areas, such as finance, accounting, engineering and other technical matters.

The Shari'a Courts hear all issues in relation to the personal status of Muslims of all nationalities. These courts have a four-tier system:

- the Lower Shari'a Court;
- the Higher Shari'a Court;
- the High Shari'a Court of Appeal; and
- the Court of Cassation.

The Shari'a Courts are further divided into two sections: for Sunni Muslims and for Shia Muslims.

In addition to the Civil Courts and Shari'a Courts, there is a Constitutional Court which acts as an independent judicial authority solely tasked with reviewing and ensuring that no enacted laws contradict the Constitution of Bahrain. The Constitutional Court also addresses the question of constitutionality of legal provisions which arise in any existing case and which are referred to it for determination.

Bahrain's courts have broad jurisdiction over legal disputes. For example, jurisdiction can be based upon a party having its *domicile* or place of business in Bahrain.

Limitation

The general limitation period for bringing civil claims in Bahrain is 15 years from the date on which the unlawful act was committed. However, exceptions exist for certain types of claims relating to insurance, construction, and employment, which each have a limitation period of three years, three years and one year respectively from the date on which the unlawful act was committed.

Procedural steps and timing

Proceedings are conducted in Arabic and any documents submitted to the courts must be translated into Arabic by a locally licensed translator.

The process of litigation is broadly similar across the Bahrain courts. Proceedings are commenced when a claimant submits an application to the competent court in the form of a statement of claim to the Case Registration Department. A hearing will then be scheduled with the claimant (usually within one week). On the day following the first hearing attended by the claimant, the competent court will send the defendant a summons along with a copy of the statement of claim. In the summons, the defendant will be directed to file a defense memorandum at least three days before the date of the upcoming hearing.

Typically, the timeframe between the date of the summons being sent to the defendant and the parties' first appearance in court is 8 days for matters before the Court of Minor Causes and 15 days for matters before the High Court or the High Court of Appeal.

Where urgent proceedings have been requested, the Court for Urgent Matters (a court that sits at the same level as Court of Minor Causes and its jurisdiction is limited to contingent claims relating to civil matters) will usually give a 24-hour notice period for attendance unless the court believes that the matter is of such urgency that a shorter timeframe is merited.

Timeframes for each stage of the proceedings will vary depending on the complexity of the case and whether the court has appointed an expert. Furthermore, there are no formal deadlines by which cases must proceed.

With the above in mind, cases before:

- the Court of Minor Causes and Court of Execution will take approximately three to six months from commencement up to judgment;
- the High Court will take approximately three to six months from commencement up to judgment;
- the High Court of Appeal will take approximately two to four months from commencement up to judgment;
- the Court of Cassation (in respect of civil matters) will take approximately 12 months from commencement up to judgment;
- the Lower Shari'a Court will take approximately three to six months from commencement up to judgment;
- the Higher Shari'a Court will take approximately three to six months from commencement up to judgment;
- the High Shari'a Court of Appeal will take approximately three to six months from commencement up to judgment; and
- the Court of Cassation (in respect of Shari'a matters) will take approximately 18 months from commencement up to judgment.

The timeframes provided above assume that:

- the issues in dispute are limited to legal and factual issues;
- the court has not appointed an expert; and
- notification of the proceedings does not become protracted.

Litigants are not required to be represented by an attorney before any of the courts. At each hearing (before any of the courts), the parties themselves and/or their authorized representatives can appear.

Disclosure and discovery

There is no principle of disclosure in Bahrain similar to common law jurisdictions. Parties substantiate their claims using the evidence on which they wish to rely. If a party makes a non-specific request for discovery of documents or information, the request will not be accepted by the court. Further, the court may, at its own discretion, order a party to submit any additional evidence it deems relevant.

However, it is possible for a party to request the court to order, or the court on its own power may order, the opposing party to disclose documents that are defined in a specific request. The party requesting the disclosure must demonstrate that it has a legitimate interest in the documents for the purpose of the case. The submission of documents can only be requested once legal proceedings have commenced. However, in practice, orders for disclosure are rare.

Default judgment

Bahrain courts allow for a default judgment to be entered into where a defendant is properly summoned but fails to appear before the competent court without valid reason. The law does not provide guidance on what constitutes a valid reason in such circumstances and therefore is determined on a case by case basis.

Despite entering a default judgment, the court will analyze the merits of the claim to reach a judgment.

In circumstances where a party was absent when a judgment was given, and the party seeks to appeal that judgment, the timeframe for an appeal will commence on the date the party was personally notified of the judgment by the clerk of the competent court at their place of residence, or a chosen domicile by registered mail.

Appeals

In general, the judgments of lower courts can be appealed as of right to a superior court. The timeframe and grounds for such appeals are found in the Civil and Commercial Procedures Law.

The general timeframe to file an appeal at each court level is 45 days from the date of the issued judgment that is being appealed, unless otherwise provided by law. Subject to a small number of exceptions, the timeframe for filing an appeal commences when the unsuccessful party has been notified of the judgment.

If the competent court issues its judgment at a hearing where all parties were present, the timeframe for an appeal begins to run on the date of that hearing.

A party loses its right to appeal if it fails to appeal a judgment within the permitted timeframe. Timeframes for appeal stages vary depending on the complexity of the case and whether the court has appointed an expert. There are no formal deadlines by which cases must proceed.

With the above in mind, cases before:

- the High Court will take approximately three to six months from commencement up to judgment;
- the High Court of Appeal will take approximately two to four months from commencement up to judgment;
- the Court of Cassation (in respect of civil matters) will take approximately 12 months from commencement up to judgment;
- the Higher Shari'a Court will take approximately three to six months from commencement up to judgment;
- the High Shari'a Court of Appeal will take approximately three to six months from commencement up to judgment; and
- the Court of Cassation (in respect of Shari'a matters) will take approximately 18 months from commencement up to judgment.

The timeframes provided above assume that:

- the issues in dispute are limited to legal and factual issues;
- the court has not appointed an expert; and
- notification of the proceedings does not become protracted.

Interim relief proceedings

A number of interim relief measures are available upon application to the competent courts. These include attachment of assets (for more details see Prejudgment attachments and freezing orders) and travel bans on individuals leaving Bahrain.

Interim relief measures can be applied before, during and after judgment has been rendered (pending its execution). The law does not set out timeframes for applying for interim relief, nor does it set out the deadlines for the competent courts to issue rulings on such applications.

Bahraini law states that the claimant must submit an application to the competent court in order to obtain interim relief. The law does not further elaborate the procedure to obtain interim relief nor the criteria that an applicant must satisfy to obtain interim relief. Generally,

where there is risk that the claimant's rights may be hindered, the claimant may submit an application to obtain interim relief before the Court of Urgent Matters to expedite the measures.

Bahraini law does not specify a timeframe for granting interim relief. That said, in practice the approximate timeframe between the commencement of the interim proceedings up to judgment would be three months.

Litigants are not required to be represented by an attorney before the court. At each hearing (before any of the courts), the parties themselves and/or their authorized representatives can appear before the court.

Any petition to appeal against an order for interim relief must be heard within eight days of such appeal.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are types of interim relief in Bahrain. Any party may seek a prejudgment attachment by seeking an order from the Court of Execution, to obtain and maintain an attachment over the opposing party's assets.

Such applications can either be made during the course of proceedings or prior to substantive proceedings being commenced. Where such applications are made prior to substantive proceedings being commenced, they are usually made on an *ex-parte* basis.

Almost all assets (whether moveable or immovable) may be attached. Assets that cannot be attached include:

- the home which is the dwelling of the party's family;
- furniture and books (i.e. records) necessary for the party to carry on his profession;
- salaries of staff and employees; and
- public property or property owned by the state.

In order for an attachment application to be successful, the claimant must persuade the court that there are valid reasons for the issuance of such an order. The reasons for which a court will order an attachment are not exhaustive but include:

- there being a risk that the defendant will dissipate its assets; and/or
- there being a risk that the defendant has acted (or will act) in a way that will hinder or delay the enforcement of a judgment.

In circumstances where an attachment is applied for and granted prior to the issuance of substantive proceedings, the law requires substantive proceedings to be filed within eight days of the attachment being effected. Should this not occur, the attachment would be lifted and treated as void.

An attachment order may be appealed to the competent court within eight days from the date when the party concerned is notified of the attachment order. As the attachment would be approved by a court order, a creditor would not be held liable for any damages caused by the attachment to the debtor, even if the attachment had been wrongly granted.

Costs

The costs of litigation in Bahrain can be divided into translation fees (if any), court fees (which include court appointed expert fees) and lawyers' fees.

Court fees are deemed to include:

- claim registration fees. When submitting a statement of claim to the competent court, the party must pay a court fee of approximately 2.5% of the claim amount to the clerk of the court; and
- expert fees, which will be subject to the court's discretion and vary on a case-by-case basis.

Legal and other fees (such as translation fees) are not included in court fees.

The competent court has the authority to award costs, including lawyers' fees, to be paid by the unsuccessful party. The Bahrain courts usually order the losing party to bear the court fees; legal and other fees are determined based at the sole discretion of the court. In practice, where any fees (other than court fees) are awarded, they are minimal and do not reflect the actual legal (or other) costs incurred

by a party. Generally, the fees that are awarded in this regard are less than USD600.

If both parties are unsuccessful in their claims, the competent court has the discretion to rule that either:

- each party will bear the costs that they have incurred; or
- the total costs will be divided between the two parties; or
- one of the parties will bear the total costs.

Class actions

In Bahrain, class action proceedings may be permitted, provided the parties all have the same cause of action. In addition, any person may intervene and join ongoing litigation if that person has an interest that is relevant or related to the case. The intervention can be made either in accordance with the regular procedures for filing a claim before the hearing, or by an oral request to the court during the hearing. Furthermore, the court has the discretion to judge the merits of the intervention and may reject the intervention if it is deemed to be fit and necessary. In practice, the decision regarding whether to carry forward such a case as a single action lies with the competent court. Usually the court chooses to conduct independent trials for each applicant.

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Belgium

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Overview of court system

Belgium is a civil law jurisdiction and civil proceedings are regulated by the Belgian Code on Judicial Proceedings (the Code). The Code was enacted on 10 October 1967 and entered into force on 1 November 1970. It has since then been subject to various amendments.

Precedents do not bind other courts but they are nonetheless used as a source of authority. This is especially the case for judgments of the Belgian Supreme Court (*Hof van Cassatie/Cour de cassation*).

The language of court proceedings is subject to strict regulation. In civil, commercial and employment law matters, proceedings are conducted in French or Dutch depending on where the court is located. In criminal cases, the language of the defendant is the relevant element to determine the language of the proceedings. Whilst most cases are heard in French or Dutch, proceedings in courts located in the German-speaking areas of Belgium will be heard in German. Proceedings in English or any other language are not possible.

The Belgian civil court system is organized as a pyramid and consists of several levels:

- At the lowest level are the 162 Justices of the Peace (*vredegerecht/justice de paix*), which are competent for small claims (not exceeding EUR5,000) and for a number of specific matters (such as disputes relating to rent or consumer credit), and, secondly, the 15 Police Tribunals (*politierechtbank/tribunal de police*), which deal with minor criminal offences and road traffic related matters (both criminal and civil).
- At the next level, we have the courts of first instance. The Court of First Instance (*rechtbank van eerste aanleg/tribunal de première instance*) has general competence to handle all cases that do not fall under the jurisdiction of any other court or that concern certain specific issues. The Court of First Instance also acts as an appellate court for judgments from the Justices of the Peace and most judgments of the Police Tribunal. Each Court of First Instance is subdivided into three sections: the civil section, the criminal section and the family and youth section.

  At the same level, the Business Court (*ondernemingsrechtbank/tribunal de l'entreprise*) has jurisdiction in proceedings between or against businesses. The term 'business' essentially comprises sole traders, companies, associations and foundations (though some exceptions apply). Additionally, the Business Court deals with a number of specific commercial disputes, such as insolvency matters, shareholders' disputes or directors' liability cases.

  Also at the same level, the Employment Tribunal (*arbeidsrechtbank/tribunal de travail*) has jurisdiction in matters relating to employment or social security law.

  There are 13 Courts of First Instance, Business Courts and Employment Tribunals, with additional locations spread across the country.
- The Court of Appeal hears appeals against judgments of the Court of First Instance (except where it sat as an appellate court), the Business Court and some judgments of the Police Tribunal. An appeal against a judgment of one of the Employment Tribunals is brought before the Employment Court (*arbeidshof/cour de travail*).

At the same level, we have the Court of Assizes (*Hof van Assisen/Cour d'assises*), which deals with the most severe crimes, such as murder. A jury of twelve will decide on whether the defendant is guilty and, if so, the sentence. Unlike the Court of Appeal, the Court of Assizes is not an appellate court. One cannot appeal a judgment from the Court of Assizes - except directly before the Supreme Court.

- At the highest level is the Supreme Court. Unlike the other appellate courts, which review the case anew on both points of law and fact, the Supreme Court will only examine whether the court has correctly applied the law.

In addition to these, Belgium also has specialized administrative courts, for instance for matters relating to immigration or urban planning, with the Council of State (*Raad van State/Conseil d'état*) as the highest administrative court. It is competent for appeals against judgments of the other administrative courts, with a role similar as that of the Supreme Court, and serves as the first and last instance administrative court in matters where no specialized administrative court exists.

Lastly, the Constitutional Court (*Grondwettelijk Hof/Cour constitutionnelle*) has exclusive jurisdiction to determine whether legislation enacted by one of the Belgian parliaments is in accordance with the Belgian Constitution or with the rules on the distribution of powers between the federal level, the communities or the regions. Other courts can refer preliminary questions to the Constitutional Court if they have doubts as to constitutionality of certain legislation.

Limitation

If a claim is time barred, the court will reject it and will not assess the merits of the case. In principle, all contractual claims or claims for which there exist no specific limitation periods are subject to a ten-year limitation period beginning on the date on which the rights under the contract could have been exercised. Unlike for non-contractual claims (see below), for contractual claims the moment the plaintiff learnt of the existence of the claim is irrelevant for limitation purposes.

For tort or so-called non-contractual claims, this period is five years from the moment the plaintiff learnt of either the damage or its aggravation as well as the identity of the person liable. In any event, there is a back-stop on tort claims of twenty years following the date on which the harmful event occurred.

However, Belgian law has a great variety of other limitation periods which can have different starting points, for example in employment or rent matters. One should therefore be cautious to verify the applicable limitation period before commencing legal proceedings.

Procedural steps and timing

Representation by an attorney (*advocaat/avocat*) in civil proceedings is not mandatory, so a party can decide to handle a case itself. It cannot, however, instruct any person to represent him. Except in some cases, for instance in employment-related matters (where an employee can be represented by a trade union representative), attorneys have a monopoly representing parties before the courts.

Civil proceedings are typically commenced by a writ of summons being served on the adverse party by a bailiff. The writ of summons is, at the same time, registered with the court.

In some cases, however, the proceedings can be initiated by a so-called application (*verzoekschrift/requête*) that is filed with the court and will be communicated by mail to the defendant (and thus not served on the defendant by a bailiff). The plaintiff and defendant could also decide to file a joint application and in that way initiate proceedings together.

Within one or two weeks, although this may vary in practice, an introductory hearing is scheduled. At that hearing several routes are possible:

- The court could render a default judgment if the defendant or, though exceptional in practice, the plaintiff does not appear.
- The case is postponed to a later hearing or postponed indefinitely, after which any party can have the proceedings reactivated.
- If the case it not complex and can be dealt with summarily, the case may be heard at an introductory hearing or a hearing shortly thereafter, with or without the parties having first exchanged written pleadings (*korte debatten/débats succincts*).
- The majority of cases are handled through the normal track, under which the parties are given the opportunity to set out their position in written pleadings followed by a hearing where the case will be pleaded orally. The parties usually agree on the procedural calendar with their respective deadlines to file the written pleadings and, should they fail to reach an agreement, the calendar is set by the court. On average, parties file one to three sets of written pleadings each. The length of time required to exchange pleadings is determined by the parties and varies from case to case, depending on the complexity of the case and the court's availability.

The hearing concludes the proceedings and usually takes between thirty minutes and three hours. Hearings that take several days are rather exceptional. Oral pleadings are important for explaining the position of the parties to the court and to focus on specific issues. In practice, a hearing allows the parties to emphasize what they deem to be important and offers the court the opportunity to ask questions of the parties. While the oral hearing is important, the court is only obliged to take into consideration the arguments raised in the written pleadings.

In principle, the court will render the judgment one month following the date of the oral hearing. However, this may take longer if the case is complex.

The timeframe for proceedings depends on the type of court and, since some courts are dealing with backlog, its workload. For proceedings before courts of first instance, the average duration for a fairly straightforward case that is handled through the normal track is approximately one year, although it is common to have longer timeframes for complex cases.

Disclosure and discovery

For civil proceedings in Belgium, there is no formal discovery or disclosure process. Each party bears, in principle, the burden of proving its allegations and will attach to its written pleadings the list of documents (or other information) on which it relies. Copies of such information shall be provided to the other party and, shortly before the hearing, each party provides the court with a bundle with all the evidence upon which it relies.

The parties are free to decide which information they wish to rely on and submit to the court. However, each party also has a duty of good faith, which implies a certain degree of cooperation in the production of evidence.

A party that has reasons to believe its adversary is in possession of a document that is relevant to the court's decision may solicit the production of said document, if needed, with the intervention of the court. Where there are strong indications that a third party has a document that is of relevance to the proceedings, the court may order that this document, or a copy thereof, be sent to the other party and filed with the court. One will have to clearly specify the document it wishes to be produced. Document production requests cannot, in other words, be used as fishing expeditions. Documents, or information more generally, that is covered by legal professional privilege as well as (but for some exceptions) correspondence between attorneys cannot be produced. A person requested or ordered to submit such documents can raise privilege as a defence.

If a party fails to comply with the order without a legitimate reason, the court may order the party (or, on occasion, third party) to pay damages. The court can also, either in the initial order or at a later stage at the request of one of the parties, link a penalty (*dwangsom/astreinte*) to the production of the documents in question (for instance, per day the defendant has not complied with the order). Altering or destroying evidence that is ordered by a court to be produced is a criminal offence under Belgian law.

The court further has the power to take measures aimed at ensuring that evidence is properly gathered and preserved. For this purpose, the court may order the appointment of a third party (such as a notary or bailiff) to hold and preserve certain information, which could be useful if the originals are of importance or if there are reasons to fear that one of the parties may otherwise try to alter or destroy the information in question.

Default judgment

If the defendant does not appear at the introductory hearing or, should the case be postponed, a later hearing, the court is obliged to thoroughly analyse the merits of the claim before delivering a default judgment at the request of the plaintiff. The court will, for instance verify whether the defendant was properly informed of the hearing and analyze issues of liability and quantum. It could, for example, reduce the quantum where the amount specified in the claim is unreasonable. If the court is not satisfied that the summons was properly served on the defendant, it can also order the plaintiff to have it served again.

If the claimant does not appear, the judge can simply reject its claim. The claimant's failure to appear at the hearing is quite exceptional in practice.

Furthermore, a default judgment cannot be rendered against a party that has filed a written pleading, even if it does not appear in person before the court. Once a party files its written pleading, the proceedings become adversarial and the court is obliged to address the issues raised in the pleading in its judgment.

The party who failed to appear at the hearing and has had a default judgment rendered against it, can challenge it by appealing the judgment. The aggrieved party has one month as from service of the judgment to make its challenge. A so-called opposition (

verzet/opposition), which is a remedy available to the person against whom a default judgment is handed down, is only possible if the judgment cannot be appealed, for instance when the default judgment is a judgment on appeal or if the value of the case does not exceed the threshold to appeal. In that case, the proceedings will be assessed anew before the same court as that which issued the default judgment and the court will review the case in its entirety, both as to the law as to the facts.

Appeals

A judgment can be appealed from the moment it is delivered and, in any event, no later than one month as of the date on which it is served by a bailiff (although longer time limits apply if one of the parties resides abroad). This implies that the one-month time-limit does not start when the court informs the parties of the judgment, but only from when one of the parties have taken the initiative to have the judgment served on the other. If none of the parties does so, the time limit will not commence.

If a party decides to appeal a judgment, it must identify the particular objections it has against the court's decision. Only the parts of the first decision that are appealed will be subject to a new decision. A party could, for example, decide to only challenge the court's decision as to the quantum of the damage and not the question whether or not there was a breach of contract.

The appellate court will review the facts of the case and questions of law. It will, in other words, review the case anew and the parties are free to bring forth new arguments or modify the relief sought (provided, in case of the party who was the plaintiff at first instance, it is based on facts or circumstances mentioned in the initial summons).

A judgment of an appellate court can be appealed to the Supreme Court, but the Supreme Court will only review questions of law. Unlike the appellate courts, which have the full power to review the merits of the case, the Supreme Court can only assess whether the court has applied the law correctly. The time limit for lodging an appeal to the Supreme Court is three months after the service of the judgment on the party that appeals.

Appeal proceedings can last a number of years depending on the court's workload. By way of illustration, some appeal proceedings before the Brussels Court of Appeal have lasted more than five years. The Supreme Court usually takes around a year and a half to decide on a case.

Interim relief proceedings

The courts have the power to grant interim measures (*voorlopige maatregelen/mesures provisoires)* to protect the interests of the parties before the commencement and during the course of proceedings. A person seeking such interim measures has three options:

- Request the interim measures before the same court that has jurisdiction to rule on the merits.
- In summary proceedings (*procedure in kort geding/action en référé*), before the President of the Court of First Instance, Business Court or Employment Tribunal (depending on which court has jurisdiction), provided the plaintiff establishes that there is urgency – that is, the applicant would suffer harm were the case not dealt with through summary or expedited proceedings.
- By filing an *ex parte* application with the President of the Court of First Instance, Business Court of Employment Tribunal (depending on which court has jurisdiction). Since the party against whom relief is sought will not be informed of the proceedings until after the order is delivered, there is a high threshold for obtaining interim relief on an *ex parte* The plaintiff will have to show that there is an absolute necessity that justifies *ex parte* proceedings and thus a derogation from the adversarial nature of civil proceedings. This is the case where the addressee cannot be identified or where the element of surprise is essential for the relief to be effective.

Typical interim relief measures in Belgium include:

- the appointment of an expert, since the courts are in general reluctant (although it occasionally does happen in practice) to rely on evidence on technical issues submitted by the parties in, for instance, the form of a party-appointed expert report.
- the payment of a provisional sum of money, for example in a dispute relating to breach of contract.
- the production of documents.
- an injunction ordering a party to do or refrain from doing a particular action pending a decision on the merits - for instance, an order requiring a party continue performing a contract in a dispute about the termination of a contract, the suspension of construction works, the removal of an article from a magazine, newspaper or website, or the transfer of an asset to the other party.

To compel the addressee of the order to comply with it, the court can impose a penalty. For instance, in a case where the lessee of a car

refuses to return the car to the lessor, the court could impose a penalty of EUR500 (or any other amount it deems appropriate) for every day the lessee fails to do so. If the addressee fails to comply with the order, it will have to pay the penalty to the other party. Though not required to do so, the court usually sets a maximum penalty that a party will be liable to pay.

If interim measures are granted in proceedings separate from the proceedings on the merits, a subsequent proceeding on the merits usually follows. However, this is not a requirement. It is, for example, possible that the parties may settle the dispute outside of court or that a merits proceeding is no longer required because a debtor has paid its debt. In addition, the judge granting interim relief sometimes sets a deadline by which a party must commence a proceeding on the merits. Failure to do so may lead to the expiry of the interim measure.

An order granting or rejecting interim measures can be appealed in the same way that any other judgment. Where the interim measure was granted on an *ex parte* basis, a special type of opposition (*derdenverzet/tierce opposition*) is available to the party against whom the order was directed. A party has one month from the service of the order to file the appeal or the opposition; the court will then decide the case anew on both points of law and fact. If, however, the interim measure is ordered by the same court that will subsequently rule on the merits, an appeal against the interim order must be brought together with the judgment on the merits.

Such an appeal or opposition does not suspend the enforceability of the interim relief. The party to whom to order has been granted may continue the enforcement even if the other party decides to appeal or file an opposition.

Prejudgment attachments and freezing orders

A creditor may apply to have a debtor's assets frozen, preventing the debtor from disposing of the encumbered assets (for example, by selling them). Two conditions must be met:

- The creditor must have a good arguable case that it has a due and payable debt owed by the debtor. That is, the creditor need not have already obtained a judgment ordering the creditor to pay the debt and the mere fact that the claim is contested does not prevent a creditor from freezing its debtor's assets. The court will determine, on a *prima facie* basis, whether the creditor's arguments are sufficient to justify the freeze.
- The creditor must have reason to believe that it will be unable to recover the debt unless the debtor's assets are frozen (the so-called urgency requirement). This essentially means that the debtor is in or is facing financial difficulties.

Since secrecy is of the utmost importance, a freezing order is requested by filing an *ex parte* application with a specialized judge sitting in the Court of First Instance. Usually within a few days, the order is rendered. If the asset freeze is granted, the creditor will have the order served on the debtor by a bailiff, following which the freezing order takes effect.

For assets owned by a debtor but held by a third party (for example, funds in the debtor's bank accounts), the creditor is not actually required to seek authorisation from the court before instructing a bailiff to have the assets frozen. It is to be noted, however, that a creditor proceeding om this basis would do so at its own risk: should the debtor decide to bring a challenge, the court may overrule the freeze and (albeit rather exceptional in practice) order the creditor to pay damages. Additionally, the third party holding the debtor's assets has fifteen days following service of the freezing order to deliver a declaration to the court. The declaration states what assets it holds for or on behalf of the debtor. If the third party fails to deliver the declaration, the court may (although it does enjoy a margin of discretion) decide that the third party is jointly and severally liable together with the debtor for the creditor's debt.

The debtor may challenge the freezing order within one month of being served with it. The debtor can argue that the two conditions mentioned above were not met and could even claim damages from the creditor if the court finds that the initial order was abusive – that is, obtained in bad faith. For example, it may be deemed abusive if a creditor proceeds to freeze a debtor's assets without the court's prior authorization (where such authorization was not required) and the court subsequently decides that the relevant conditions were clearly not met, or if the court believes that the information presented to it by the creditor in order to obtain the freezing order was not accurate or complete.

In principle, all assets (real estate, movable property, and claims on third parties such as bank accounts) can be attached. However, there are a number of exceptions - for instance, government assets.

Costs

The court will order the unsuccessful party to bear the legal costs of the successful party, subject to a general discretion to make some other costs order. Where, for instance, the plaintiff claimed EUR100,000 in damages but was ultimately only awarded EUR30,000, the

court could decide that costs should be split between both parties.

The costs relating to civil proceedings in Belgium are, at least in comparison to some other jurisdictions, fairly modest. The most noteworthy costs are the following:

- The bailiff costs for serving the writ of summons on the defendant or to have the court's judgment served, which is generally around EUR300 (but could be higher if, for example, the summons is to be served abroad).
- The court fee (*rolrecht/droit de rôle*), which is essentially a tax or duty, of EUR165 for most proceedings at the first instance level and EUR400 for cases before the Court of Appeal. The court fee will be collected by the Federal Tax Authorities (*Federale Overheidsdienst Financiën/Service Public Fédéral Finances*).
- The fees and costs of a court-appointed expert or mediator.
- The fixed statutory compensation for legal representation (*rechtsplegingsvergoeding/indemnité de procedure*), which is based on the value of the case and can exceptionally be decreased or increased by the court depending on the particulars of the case, such as complexity or the limited financial means of the party ordered to pay costs. Legal representation costs are capped by statute in accordance with a scale set by a Royal Decree. For cases with a value of over EUR1,000,000, the standard amount is EUR22,500 and can in any event not be higher than EUR45,000. In the majority of cases, this compensation only covers part of a party's lawyers' fees.

Furthermore, barring a few exceptions, judgments must be registered with the Tax Authorities and, at that stage, registration duties become payable. The registration fee is 3% of the principal amount that the unsuccessful party is ordered to pay and is levied when the successful party requests an authenticated copy of the judgment (which it will need in order to serve the judgment on the unsuccessful party).

Finally, the costs relating to the enforcement of a judgment are borne by party against whom enforcement is sought. Enforcement costs do not include lawyers' fees.

Class actions

Class actions do exist under Belgian procedural law and are brought before the Business Court. The aim of such claims is to provide compensaton damage suffered by a group of plaintiffs. A class action can be brought on a large variety of topics, however a few requirements need to be met:

- The invoked cause constitutes a potential breach of the defendant's obligations under contract, European regulations or the laws mentioned in Article XVII. 37 of the Economic Law Code. Whilst this means that class actions are not available for every type of case, the list of applicable cases is fairly extensive and includes actions under competition, market practices and consumer protection laws.
- The action is initiated by a group representative. For example, an association defending consumer interests with legal personality and that sits on the Special Advisory Commission for Consumer Affairs (such as FGTB or Test-achat, an association that has received ministerial approval) or a representative entity approved by a Member State of the European Union or the European Economic Area that meets specific criteria. The litigation group itself will consist of all consumers who, individually, are harmed by the common cause.
- A class action would be a more relevant and efficient procedure compared to normal court proceedings.

If these admissibility conditions are met, the class action procedure has two possible outcomes: an amicable settlement or a judicial decision.

The keys phases in the class action procedure can be summarised as follows:

- Admissibility phase: within two months of the request being filed, the court rules on the admissibility of the collective redress action.
- Negotiation phase: during the timeframe set by the court, the group representative and the defendant negotiate an agreement on compensation for collective harm.
- Approval phase: in case of an agreement between the group representative and the company regarding consumer compensation, the court reviews and, if it is satisfied with the agreement reached, grants approval.
- Substantive decision: if no agreement is reached, the court will issue a determinative ruling. The judge can either grant the collective redress request or reject it.

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Brazil

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Overview of court system

Brazil is a civil law country where, in most cases, codified laws take precedence over judicial decisions. However, over the last 60 years or so, Brazil has instituted several procedures that give greater weight than previously to the normative effect of judicial decisions. The main reason to give judicial decisions such importance is the overwhelming case load in courts and the need to make them more efficient (In fact, the Brazilian Federal Constitution demands a "reasonable duration" of all judicial proceedings - Article 5, LXXVIII, of the Federal Constitution). As a result, the term precedent and even the concept of *stare decisis* (*i.e.*, determining points in litigation according to precedent), have started to appear more frequently in Brazil, in both scholars' opinions and legislated changes enacted in recent years. Brazil has a relatively new system of precedents introduced by the Code of Civil Procedure (Law No 13,105 of March 16, 2015 - CPC). This new system has numerous peculiarities in Brazilian Law. Article 927, for example, states that the judges and courts in Brazil will observe: past decisions from the Federal Supreme Court in constitutional matters; the binding decisions of the Federal Supreme Court; the past decisions by the Superior Court of Justice (Brazil's court of standardization of federal matters); and decisions of highest tier state courts.

Leaving aside special courts covering areas such as military, electoral and labor (which fall outside the scope of this report), the Brazilian civil justice system is structured into two different judicial branches:

- federal courts; and
- the courts organized by each state (state courts).

The jurisdiction of the federal and state courts does not overlap. The jurisdiction of the federal courts will depend on:

- the matter under dispute (*ratione materiae*); and
- the legal nature of each of the parties involved in the litigation *(ratione personae).*

State courts will hear cases that do not fall under the jurisdiction of other courts.

The different federal and state courts and the type of disputes that they have jurisdiction over are as follows.

Federal Low Courts

These courts are scattered over the capitals and major cities of Brazil. In general, these courts have jurisdiction to hear most disputes in which the federal government, federal bodies and agencies and some federal companies take part as plaintiffs, defendants, or intervening parties. Also, these courts have jurisdiction over disputes involving a foreign government or organism and companies or individuals domiciled in Brazil or disputes involving one of the referred foreign entities and a Brazilian city government. The Federal Low Courts are also competent to enforce foreign awards after the *exequatur* process before the Superior Court of Justice.

State Low Courts

Each state is empowered to organize its own Judiciary Branch. These courts are spread almost all over the country and have jurisdiction to rule on most disputes between private parties. In addition, these State Low Courts have jurisdiction over disputes based on private law or state and municipal environmental laws, disputes involving the government of the respective state, as well as state-owned companies

(like Petrobras), and cities' governments and city-owned companies. Furthermore, there are low courts specialized in bankruptcy (and even in case a federal body takes part of the bankruptcy/rehabilitation proceedings, for instance, as a creditor, this will not result in jurisdiction of the federal courts in detriment of the particular state bankruptcy court), and intellectual property disputes.

Federal High Courts

Their territorial jurisdiction is divided into six different regions (each covering two or more states). In most cases, these courts rule the appeals filed in the lawsuits started in the Federal Low courts located in the applicable region.

State High Courts

Generally, these High Courts rule over the appeals filed in lawsuits started at the State Low Courts where the respective High Court is located.

Superior Court of Justice

This federal court is located in Brasilia, the country's capital. One of the main roles of this court is to rule over appeals filed against decisions rendered either by a Federal or State High Court when:

- such decisions contravene a treaty, convention or federal law; or
- upon the analysis of a given treaty, convention or federal law, such decisions conflict with precedents issued by the Supreme Court of Justice or the Supreme Court on the same matter.

It is also the court responsible to grant the *exequatur* of foreign decisions, foreign arbitral awards or foreign judgments in Brazil. An *exequatur* is a precondition that permits the enforcement of a foreign decision, judgment or arbitral award within Brazilian territory.

Supreme Court

It is the last level of the Brazilian judiciary and, like the Superior Court of Justice, is located in Brasilia. One of the main roles of this federal court is to rule over appeals against decisions rendered by a Federal or a State High Court or, even, decisions rendered by the Superior Court of Justice, when these decisions:

- directly contravene the Brazilian Constitution (the violation must have "general repercussions" in order to be analyzed by the Supreme Court, meaning that the issue discussed in the appeal needs to be relevant from an economic, political, social or legal standpoint and that it transcends the interests of the parties involved);
- declare a given treaty, convention or federal law as unconstitutional; or
- relate to a law or ordinance deemed valid and issued by the relevant authority in one of the Brazilian states or cities in detriment to the Brazilian Constitution.

Further, Brazil does not have a separate administrative jurisdiction, which means that the judicial branch including the federal and state courts have jurisdiction over all disputes, including disputes involving the executive branch or state-owned entities.

Court proceedings are generally public, except where court proceedings are to be confidential, namely cases involving:

- public or social interest;
- family law;
- information protected by the right to privacy; and
- agreements with an arbitration clause.

Limitation

The general statutory limitation period for filing civil claims in Brazil is ten years from the date when the cause of action arose but such term is shorter for specific types of claim (e.g. the limitation period for bringing a tort claim is three years). Under the Superior Court of Justice's recent precedents, the applicable limitation period for damages claims under contractual relationships is ten years.

Procedural steps and timing

Only the federal government may legislate on civil and commercial procedures. The Code of Civil Procedure (CPC), enacted in 2015, is applicable to civil litigation proceedings and other matters for which no specific procedural rules exist. The Brazilian Federal Constitution limits trial by jury to criminal cases involving homicide.

As a general rule, representation by an attorney in civil proceedings is mandatory in Brazil. The only exception relates to lawsuits filed with the Small Claim Courts by individuals seeking to recover:

- in State Courts, an amount below the equivalent of 20 times the minimum wage; or
- in Federal Courts, an amount below the equivalent of 30 times the minimum wage.

The current minimum wage in Brazil (2023) is BRL1,320.00 (approximately USD272.24).

Civil lawsuits are initiated when the plaintiff files a petition with the relevant court. The plaintiff must serve the respondent with the filed petition and such service must take place at least 20 business days prior to a mandatory conciliation hearing, which the respondent is required to attend. This mandatory hearing:

- will take place before the court; and
- shall be scheduled at least 30 days in advance.

Should the parties fail to reach an agreement at the mandatory hearing, the respondent must file its defense within 15 business days of the date of the conciliatory hearing.

The judge may discharge the parties of their obligation to attend the mandatory conciliatory hearing. If this happens, the respondent must file a defense within 15 business days after it is served with the notice of the parties being discharged of the obligation to attend the mandatory conciliatory hearing. In cases where there is more than one respondent, the beginning of such term is the day after the last respondent is served.

After the respondent files a defense, the plaintiff has 15 business days to reply to the respondent's allegations.

The parties have five business days, counting from the day of the decision granting them the opportunity to present evidence, to inform the court of the evidence they wish to rely on. Timeframes for this evidence presentation phase may vary depending on the complexity of the matter.

Finally, after the evidence presentation phase, the judge may grant the parties the opportunity to file their closing arguments before rendering a judgment.

The usual total timeframe for a lawsuit to be ruled upon depends mainly on the complexity of the case, the relevant court competent for judging the case, the evidence the parties want to present and the number of appeals the parties decide to file. It may range from five months (in lawsuits in which it is not necessary to present any evidence) to three years, in accordance with the table below:

INITIAL TERM	FINAL TERM	NUMBER OF DAYS/MONTHS/ YEARS
Service	Mandatory conciliatory hearing	40 business days
Mandatory conciliatory hearing	Defense	15 business days
Defense	Decision granting opportunity for reply	1 month
Decision granting an opportunity for reply	Reply	15 business days
Reply	Decision granting opportunity for requesting evidence production	1-2 months

Decision granting opportunity for requesting evidence production	Petition requesting evidence production	5 business days
Petition requesting evidence production	Beginning of evidence production phase	1-2 months
Beginning of evidence production phase	Closing of evidence production phase	1-2 years
Closing of evidence production phase	Decision granting opportunity for closing arguments	1-2 months
Decision granting opportunity for closing arguments	Closing arguments	15 business days
Closing arguments	Judgment	1-2 months

Disclosure and discovery

Under the Brazilian Code of Civil Procedure, parties must ordinarily rely on their own evidence. However, a party can request the disclosure of documents or objects if there are grounds for believing that documents are in the other party's possession and that such evidence is relevant to the case. The other party must be granted five business days to reply to such requests. Also, where the court considers the analysis of a document or object necessary for reaching a decision, it may order the party in possession of such evidence to submit it for analysis.

If a relevant object(s) or document(s) is in possession of a third party, he/she/it may be ordered to present it to court. Furthermore, if a party or the third party refuses to comply with the disclosure order without an acceptable reason, the court may issue a search and seizure order.

Default judgment

Default judgments can be applied for in proceedings in any court when a respondent does not file a defense within the relevant time period (as long as the respondent has been properly served). As a result of such failure, and except in cases such as those specified below, the allegations formulated by the plaintiff will be presumed to be true. The judge will continue with the proceedings on that basis, consider the merits of the plaintiff's claims, and ordinarily rule in the plaintiff's favor provided that the plaintiff discharges its burden of proof.

The presumption that the plaintiff's allegations are true does not arise every time that the respondent has been duly served but fails to file a defense. For example, such presumption will not arise when the lawsuit deals with personal rights (such as the right to live) or when the plaintiff has not presented essential documents and information to persuade the judge on the strength of its claims. In the latter case, the judge will order the plaintiff to specify the evidence it intends to present.

On the other hand, even when a default judgment has been granted, the respondent can object to the default judgment before the court that has granted it. Such objection will be made when there are issues related to the service of process, which can cause the entire lawsuit to be nullified from its beginning.

Also, the respondent in default is allowed to participate in the lawsuit as long as it does not seek to modify measures that have already been adopted during the proceedings. For example, the respondent will not be able to file a defense once default judgment has been granted but will be able to present further evidence to challenge plaintiffs' allegations.

Appeals

In Brazil, parties may file an appeal against interlocutory decisions and final judgments. The term for the parties to file any appeal is 15 business days from the date the judgment is notified to the parties (with the exception of a motion for clarification, which must be made within 5 business days). After an appeal is filed, the opposing party has 15 business days to file a reply. Although it is very difficult to predict the duration of an appeal in Brazil, the average time for the Federal or State High Courts to render judgments varies from 12 to 30 months.

Appeals before a State High Court are decided by a panel of three judges (in some cases it is possible for a single judge acting alone to decide the case). Each state has a High Court that will rule the appeals against decisions issued by the State Low Courts. Appeals filed against decisions issued by Federal Low Courts shall be decided by the Federal High Courts.

As noted in Overview of the court system, the Superior Court of Justice has jurisdiction to rule over appeals filed against decisions rendered either by a Federal or State High Court when:

- such decisions contravene a treaty, convention or federal law; or upon the analysis of a given treaty, convention or federal law, such decisions conflict with precedents from the Superior Court of Justice or the Supreme Court on the same matter.

The Supreme Court can rule over appeals against decisions rendered by a Federal or a State High Court or, even, decisions rendered by the Superior Court of Justice, when these decisions:

- directly contravene the Brazilian Constitution (the violation must have "general repercussions" in order to be analyzed by the Supreme Court, meaning that the issue discussed in the appeal needs to be relevant from an economic, political, social or legal standpoint and that it transcends the interests of the parties involved);
- declare a given treaty, convention or federal law as unconstitutional; and
- relate to a law or ordinance deemed valid and issued by the relevant authority in one of the Brazilian states or cities.

The duration of an appeal in the Brazilian High Courts (Federal or State) depends mainly on the complexity of the matter under dispute. The average duration of a High Court appeal is 36 months.

Interim relief proceedings

In Brazil, the Courts are entitled to grant two different kinds of interim relief measures:

- Urgent interim relief, which may be granted in cases where a party claims that their right is at risk of being irretrievably lost before the final award is given.
- Evident interim relief, which may be granted even when there is no immediate risk, but the right of the party seeking relief is substantially plausible and duly evidenced.

Thus, the Brazilian Code of Civil Procedure allows the parties to request interim relief measures where:

- there is enough evidence of the certainty of the plaintiff's right (Evident); or
- it is necessary to avoid irreparable harm that a party may suffer should the relief not be granted before the end of the proceedings (Urgent).

Interim relief measures can be sought before proceedings have commenced, during the proceedings and after it, while pending execution of the judgment. In both cases, the alleged right may be challenged at a later stage in the proceedings.

The most common interim reliefs in civil litigation cases are:

- injunctions, requiring a party to do or not do a particular act;
- suspension of legal effect of certain acts; and
- attachment orders to preserve assets (see further details in Prejudgment attachments and freezing orders).

The suspension of legal effect of certain acts also means the temporary suspension of judicial acts (e.g. releasing one of the parties from the terms of an agreement or excluding a debtor's name from the data base of credit protection agencies). In such cases, the targeted acts will not produce effects so long as the interim orders remain valid. However, if a lawsuit is dismissed or rejected, the legal effect of the act will resume.

It is possible for urgent injunction applications to be heard by the judge *inaudita altera pars* or *ex parte*, without the opposing party's involvement. In urgent injunction applications, neither the opposing party nor its attorney is granted the opportunity to file a defense. There is no provision in the Brazilian Code of Civil Procedure specifying the term within which a judge should analyze the request for an

urgent injunction *inaudita altera pars*, but it usually takes no longer than 48 hours. Whenever a judge grants an interim relief measure *inaudita altera pars*, the party against whom the decision was issued can file an appeal within 15 business days of the notification of the judgment to the parties.

The party who requests an urgent interim relief shall be held liable for damages caused to the other party if:

- the final judgment rejects the plaintiff's claims;
- theplaintiff does not provide the necessary means to serve the respondent within 5 business days of the granting of the pre-action interim relief;
- the relief becomes ineffective; or
- the judge accepts the respondent's allegation of statutory limitation period for filing the lawsuit.

As a general rule, parties seeking interim relief measures must be represented by an attorney, except when such measures are brought by an individual before a Small Claims Court.

Prejudgment attachments and freezing orders

Prejudgment orders and freezing injunctions are inserted in the category of interim reliefs and, therefore, the principles noted in Interim relief proceedings apply to such orders.

The Brazilian Code of Civil Procedure allows the parties to request prejudgment attachments and freezing orders as provisional remedies before:

- the court that will have jurisdiction to hear the merits of the main claim if these measures are sought pre-action; or
- the court that is hearing the main claim if the main proceedings are pending.

For a prejudgment attachment/freezing order to be granted, the plaintiff must include in its application:

- a brief statement of:
  - the right which the plaintiff is seeking to protect; and
  - the risk of loss to which the plaintiff is exposed; and
- the irreparable harm that the plaintiff will suffer if the relief sought is not granted.

Following the plaintiff's filing of an application seeking an attachment/freezing order, the respondent will be given 5 business days from the date when he was served to file a defense and specify the evidence that he/she intends to present. If a defense is not filed within this period, the court will:

- presume that the facts alleged by the plaintiff are true; and
- render a final decision on the interim relief application within 5 business days from the expiry of the term given to the respondent to file its defense.

If a defense is filed, the judge will either:

- ask the parties to present their evidence requests; or
- render a final decision on the interim relief request. There is no timeframe regarding this decision.

Where a prejudgment attachment/freezing order has been granted, the plaintiff must file a claim on the merits within a maximum of 30 days after the provisional remedy has been enforced. Thereafter, the lawsuit follows the ordinary procedural steps, as described in Section: Procedural steps and timing above.

As noted in Interim relief proceedings, where the plaintiff also argues that the prejudgment attachment/freezing order must be granted on an urgent basis, the provisional remedy can be enforced by the judge *inaudita altera pars* or *ex parte*. In this case, neither the opposing party nor its attorney is granted the opportunity to file a defense. There is no provision in the Brazilian Code of Civil Procedure specifying

the term within which a judge should analyze the request for an urgent injunction *inaudita altera pars*, but it usually takes no longer than 48 hours. Whenever a judge grants a prejudgment attachment or a freezing order (or indeed any other kind of interim measure) *inaudita altera pars*, the party against whom the decision was issued can file an appeal within 15 business days.

If granted, assets will be attached in a specific order of priority:

- money, in cash or in a deposit or invested at a financial institution;
- Federal, State and Federal District government bonds listed on the market;
- bonds and securities listed on the market;
- land vehicles;
- real estate property;
- personal property in general;
- livestock;
- vessels and aircraft;
- membership interests and shares in partnerships and companies;
- percentage of the revenues of companies;
- precious stones and metals;
- rights of acquisition from a promise of sale or a fiduciary sale; and
- other rights.

If the attachment causes any damages to the respondent, the respondent is entitled to request the competent judge to either:

- revoke the attachment; or
- substitute the asset attached.

Frequently, respondents allege that the assets cannot be attached because they are crucial to their survival, for example, their salary or household appliances.

Creditors can be held liable for damages caused to the respondent when the attachment is based on an urgent request and if:

- the final judgment is unfavorable to the party who requested the attachment;
- the plaintiff does not provide the necessary measures to serve the respondent with the lawsuit within five business days of the granting of the pre-action attachment/freezing order;
- the attachment becomes ineffective; or
- the judge accepts the respondent's allegation of statutory limitation period for filing the lawsuit.

Costs

In Brazil, the unsuccessful party will be responsible for paying the litigation costs of the successful party. These litigation costs include:

- the judicial fees; and
- the other party's attorney's fees.

The judicial fees vary in each state. In civil litigation cases, attorney's fees will be fixed at minimum 10% and maximum 20% of the amount awarded in the judgment, the economic advantage of the party or, if it is not possible to measure it, of the total amount in dispute. Even though it is not common, the fees can be fixed at a lower rate in certain situations (for example, when the claim is dismissed).

When awarding attorney's fees, the judge will consider:

- the length of the proceedings;
- the nature of the claim;
- the professional attention to the case;
- the place where the service was performed; and
- the work provided by the lawyers.

The criteria for deciding the amount to be paid for attorney's fees comprise subjective elements, including the degree of professional attention to the case. In general terms, it is possible to consider that an attorney who has adopted a proactive approach in the lawsuit (e.g. the attorney has complied with the judicial requests in a timely manner, provided the necessary documents and evidence in order to guarantee a better quality of judicial decisions and has cooperated with the opposing party's attorney) is considered to have a high degree of attention to the case.

Finally, if the party is only partially successful, the courts may order a different percentage of the amount under dispute to be paid to each attorney based on the parties' relative success or failure in the lawsuit.

Class actions

Federal Law no. 7.347/1985 provides legal grounds for class actions in Brazil. Despite the fact that class actions are not limited to disputes involving consumer protection, the Brazilian Consumer's Code (Law no. 8,078/90) contains further supplementary provisions regarding class actions. Brazilian scholars make reference to both laws as the class action system.

The class action system does not generally relate to large commercial disputes, but to actions brought to protect selected social assets, namely:

- the environment;
- consumers;
- rights of artistic, aesthetic, historic, touristic and landscape value;
- diffuse and collective rights;
- economic and urban orders;
- honor and dignity of racial, ethnic and religious groups; and
- public and social assets.

Only a limited number of institutions are allowed to bring class actions on behalf of a group. These institutions include:

- public attorneys;
- the office of the public defender;
- federal government, states, and municipalities;
- autonomous federal government agencies or federal public companies; and
- specific non-governmental associations.

For a non-governmental association to be able to file a class action, it must be active for more than one year. Non-governmental associations also only have standing to sue in cases involving infringements of rights which are within the scope of their activities. For instance, an association created for protecting the environment will only be able to file a class action to request that a company refrains from polluting a river, but not to protect consumers.

Further, whenever the respondent is held liable in a class action and is ordered to pay the amounts owed under the judgment, the amount shall not be paid directly to the plaintiff, but to a public fund that is used to protect collective rights.

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Canada

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Overview of court system

This overview describes the judicial system and practices in the Federal Court of Canada as well as most provincial/territorial courts. Variations from the prevailing approach are identified for the province of Quebec, which has a legal system distinct from those of all other Canadian jurisdictions.

Canada has a federal system of government where legislative power is divided between the federal Parliament on the one hand, and the ten provincial and three territorial Legislatures on the other.

For the purpose of this summary on dispute resolution in Canada, the provinces and territories will simply be referred to as the provinces. Further, while this summary is intended to provide a general overview of litigation in Canada, each jurisdiction has its own procedural rules and practices that may differ slightly from the general information provided herein.

The provinces each have a superior court. Superior courts are courts of inherent jurisdiction, which is to say that they hear cases on any matter except where a statute or rule specifically confers jurisdiction on some other court or tribunal. In addition to the provincial superior courts, there is also the Federal Court. The Federal Court does not have inherent jurisdiction but, rather, has a statutory jurisdiction over cases related to matters within the legislative jurisdiction of Parliament (e.g. intellectual property, aviation, competition (anti-trust), admiralty, immigration, etc.). The Supreme Court of Canada is the highest court in Canada and it is not possible to appeal its decisions.

Canadian jurisdictions have adopted the common law system, with one exception: the province of Quebec, which has adopted the civil law system. Specifically, Quebec has adopted the Civil Code of Quebec that is largely based on the Napoleonic Code of 1804. Unlike the common law, which has been described as judge-made law insofar as decisions are based on precedents, civil law – including civil law in Quebec – applies primarily the principles and rules codified in the jurisdiction's civil code.

In Quebec and in the federal court system, civil matters are tried by the judge alone. In the common law Canadian provinces, civil proceedings can be tried by a judge alone, or by a jury. However, jury trials are the exception in civil proceedings and are rare in commercial disputes. Of note, there is no constitutional right to a jury in a civil case. Further, Canadian courts have discretion to direct that a matter be tried by a judge alone. The court is likely to exercise this discretion where the case is of moderate or greater complexity. Civil jury trials are more common in personal injury claims and in some employment law cases.

A monetary judgment obtained in a provincial superior court cannot be enforced outside of the province in question. However, all provinces (other than Quebec) have enacted legislation that provides a shortcut to the enforcement of extra-provincial judgments (with the exception of judgments obtained in Quebec).

Limitation

Though there is some variance among the Canadian jurisdictions, a civil claim must typically be commenced within the two-year anniversary of the date on which the underlying cause of action arose. The limitation period will be extended if the claim could only be reasonably discovered at some point later than the date on which the cause of action arose (as might be the case where, for example, a fraud perpetrated on the plaintiff or a latent defect in a consumer product could only reasonably be discovered at some later point in time).

Procedural steps and timing

The sequence of a legal proceeding is similar across Canadian jurisdictions. A plaintiff initiates a proceeding by drafting a claim and then having the claim issued by the court. The plaintiff must then take steps to personally serve the issued claim on all defendants in the action. Any defendant who wishes to then defend the proceeding must serve a defense. While there are variations among jurisdictions, a defendant's defense is generally due within 20 days after service of the plaintiff's claim, provided that the defendant was served within the territorial jurisdiction of the court that issued the claim. If the defendant was not served within the territorial jurisdiction of the court that issued the claim, the defendant is permitted more time in which to serve a defense. In the province of Ontario, for example, a defendant served outside Ontario but in Canada or the US has 40 days to serve a defense, while a defendant served outside of Canada and the US has 60 days. It is not uncommon for the parties to agree to extend the time by which a defendant must serve a defense where the defendant can point to extenuating circumstances (e.g. the complexity of the case, difficulty in retaining counsel, etc.).

In addition to defending the plaintiff's proceeding, defendants may also bring:

- a counterclaim against the plaintiff (i.e. where the defendant has an independent cause of action against the plaintiff, or seeks some relief in the proceeding other than the mere dismissal of the action, such as a declaration as to the parties' rights and obligations);
- a crossclaim against another defendant (i.e. a claim for contribution and indemnity against another defendant in the event that the cross-claiming defendant is found liable to the plaintiff); or
- a third-party claim (i.e. a claim in which a defendant seeks contribution and indemnity from a party that is not yet a party to the litigation).

The plaintiff's claim and the defendants' defenses, counterclaims, crossclaims, and third-party claims are known as the pleadings. The pleadings define the scope of the dispute among the parties.

The length of a proceeding will be, among other things, a function of the complexity of the case, the number of parties involved, the volume of documents and the conduct of the parties (e.g. whether a plaintiff advances a case with diligence and/or whether a defendant seeks to delay proceedings). That said, a general timeline for a legal proceeding of moderate complexity is as follows:

- service of claim: (D);
- delivery of pleadings: d + 2 months to 4 months; (* See note below)
- exchange of documents: D + 8 months to 12 months;
- completions of examinations for discovery: D + 15 months to 24 months;
- motions regarding discoveries: D + 24 months to 30 months;
- mediation (if required/applicable): D + 30 months to 36 months; and
- completion of trial: D + 36 months to 48 months.

Generally, individuals may, as of right, represent themselves in legal proceedings. Exceptions to this general rule include individuals who are minors, who are representative parties in a class action proceeding, or who lack mental capacity. A corporation typically must be represented by a lawyer (which includes an in-house lawyer) unless the corporation obtains leave of the court to represent itself (e.g. to be represented by an officer, director, or shareholder of the corporation).

*** Note:** For example, if the claim were served on January 1 ("D") of any given year, all subsequent pleadings would typically be delivered between March 1 (i.e. D + 2 months) and May 1 (i.e. D + 4 months) of that same year.

Disclosure and discovery

For proceedings that are defended, parties will enter the discovery phase once the exchange of pleadings is complete. Discovery in Canada includes the production of relevant documents and oral examinations for discovery.

The scope of discovery is defined by the pleadings insofar as the pleadings set out the relevant issues in the litigation. Thus, if a document

is relevant to an issue identified in the pleadings, it should be produced (subject to certain exceptions, such as any privilege that might attach to the document) even if the document might be unhelpful to the party producing it. Quebec has a different starting point for discovery. Specifically, a party to a Quebec proceeding need only disclose those documents on which it intends to rely at trial, unless the opposing party specifically requests further production.

If a party refuses to produce a document that another party believes is relevant to the issues in the proceeding, the latter party may bring a motion for production of the document. A court will order such production where the relevant documents are not protected by privilege and where the request for production is "proportional." As an example of the principle of proportionality, a court could refuse to order a party to spend considerable time and resources to produce a large volume of documents where such documents are only marginally relevant to the issues in the proceeding.

In addition to producing relevant documents, the parties will participate in oral examinations for discovery. During such oral examinations, each party puts forth a witness to be questioned under oath by the other parties (or the other parties' respective lawyers where such parties have lawyers) about the matters that are relevant in the litigation. Examinations for discovery, among other things, allow the parties to:

- learn about the other parties' cases;
- obtain helpful admissions; and
- assess the credibility and the demeanor of the witnesses giving evidence on discovery.

Where a party to be examined for discovery is an individual, the witness on such examination will be the individual.

Where the party to be examined for discovery is a corporation, the corporation's witness (typically, but not always, an employee of the corporation) should be the person with the greatest knowledge of the matters that are relevant in the litigation.

Absent agreement of the parties or a court order, each party only produces a single witness that is examined for discovery by the other parties. Quebec is the exception to this general rule: under its Civil Code of Procedure, a party may examine more than one witness for each opposing party. As a matter of practice, parties in Quebec will attempt, among other things, to determine the number and identity of witnesses to be examined in the course of negotiating a case protocol. If the parties cannot agree to the terms of a case protocol, they may seek the court's intervention.

More often than not, the witness produced by a party for examination for discovery will also be a witness for that party at trial.

Where a witness being examined does not know the answer to a relevant question, they may be asked to give an undertaking to seek out the answer. Similarly, a witness being examined may be asked to undertake to produce any relevant documents that have not yet been produced.

Unlike some other jurisdictions, witnesses being examined for discovery in a Canadian proceeding may refuse to answer a question on the bases, among others, of relevance (i.e. the question does not relate to any of the issues raised in the pleadings) or privilege. If the witness refuses to answer an arguably proper question, the examining party may bring a motion to compel the witness to do so. Likewise, if the witness refuses to provide an undertaking to produce additional relevant documents, the examining party may bring a motion to compel such production.

Parties to a Canadian proceeding require leave of the court to examine a non-party for discovery.

Default judgment

Where a defendant does not file a defense within the specified time in which to do so, a plaintiff may obtain judgment in the defendant's absence (default judgment). The first step in this process is for the plaintiff to note the defendant in default for having failed to file a defense. Where a defendant is noted in default, the defendant is deemed to admit to all of the facts as out in the plaintiff's claim, and the defendant is precluded from taking any further steps in the litigation (other than asking the court to set aside the noting in default).

If the claim is uncomplicated and seeks payment of a specific and readily-quantifiable amount (as would be the case in a claim for non-payment of an invoice), then non-judicial court staff may grant default judgment.

Where the claim is more complicated and/or where damages need to be assessed, the plaintiff will be required to bring a motion for default judgment. For the purpose of such a motion, and as mentioned above, the facts in the plaintiff's claim are assumed to be true. Despite this, the plaintiff must still establish that the facts entitle the plaintiff to judgment (e.g. that the facts are sufficient to satisfy the

appropriate legal test), and the plaintiff may be required to lead evidence to establish the quantum of damages.

A defendant against whom default judgment has been ordered may seek to set aside the default judgment. To be successful on a motion to set aside default judgment, the defendant must:

- bring the motion without delay after learning of the default judgment;
- explain the circumstances for failing to defend the claim within the time for doing so; and
- show an arguable defense to the claim.

Appeals

A judgment in a civil matter made by a provincial superior court can be appealed to an appellate court within the province. The highest appeal court in each province is known as the Court of Appeal. Judgments made by the Federal Court can be appealed to the Federal Court of Appeal which, likewise, is the highest appeal court in the Federal Court system. The Supreme Court of Canada hears appeals from provincial Courts of Appeal and the Federal Court of Appeal. An appeal to the Supreme Court of Canada typically requires leave by the Supreme Court of Canada itself. Where this is the case, leave is only granted where the appeal raises issues of public importance. As mentioned, there is no further appeal of a decision of the Supreme Court of Canada.

An appeal of a judgment made by a provincial superior court or the Federal Court must typically be commenced within 30 days of the date of the judgment. Such appeals are normally heard within a year from the date of the judgment. The appeal court in question may issue a decision at the hearing of the appeal itself or may issue its decision some months later (although, generally, no more than 12 months later).

Leave to appeal a decision to the Supreme Court of Canada must be commenced within 60 days of the appeal court decision that is being appealed. On average, the Supreme Court of Canada will decide a leave motion within six months, oral argument of the appeal on its merits will then occur within a further six months to a year, and a decision on the appeal will typically be delivered within an additional six months.

Interim relief proceedings

Canadian courts have discretion to grant interim relief to parties to a proceeding.

Such relief can take the form of an injunction (an order requiring a party or a non-party to refrain doing certain acts) or a mandatory order (an order requiring a party or a non-party to perform some particular act).

Injunctions and mandatory orders can be granted either as interim relief (i.e. before the issues in the proceeding have been finally determined) or as an ultimate remedy. For example, a court could order an interim injunction preventing a defendant from using the plaintiff's confidential information until the matter is ultimately decided by the court, and then, following the trial of the matter, the court could order a permanent injunction preventing a defendant from ever using the plaintiff's confidential information. When injunctions and mandatory orders are sought as interim relief, they can be sought after a proceeding is commenced and up until judgment in the proceeding is rendered.

A party seeking interim relief must prove that:

- there is a serious issue to be tried;
- the party would suffer irreparable harm (i.e. harm not compensable in damages) if the injunction or mandatory order were not granted; and
- the balance of convenience favors the granting of the injunction or mandatory order.

A party may obtain an interim injunction or mandatory order without notice to, or the involvement of, the other parties where the injunction or mandatory order is urgent, or where providing notice of the motion for an injunction or mandatory order would undermine the purpose of the injunction or mandatory order (as would be the case where the intended injunction seeks to prevent a party from disposing of assets). Any injunction or mandatory order made without notice will generally have a temporal limit: it will only remain extant

until such time that the parties receive notice of the injunction or mandatory order, and are given an opportunity to contest the injunction or mandatory order in court. A party seeking an interim injunction or mandatory order will ordinarily be required to give an undertaking to pay any damages suffered by the parties affected by the injunction or mandatory order where:

- the damages are directly related to the interim injunction or mandatory order; and
- the party that obtained the injunction or mandatory order is ultimately unable to prove its claim at trial.

Typical injunctions or mandatory orders granted by Canadian courts include the following:

- *Mareva* orders that prohibit a defendant from disposing of property prior to judgment (see further details in Prejudgment attachments and freezing orders);
- *Norwich* orders that compel non-parties to provide information to the party seeking the order. The information sought further to a Norwich order may help to identify potential defendants, to find and preserve evidence that may support a claim against known or potential defendants, or to identify assets;
- *Anton Piller* orders (i.e. civil search warrants) that provide the right to search premises and seize evidence;
- Labor injunctions that restrain unlawful picketing; and
- Injunctions that restrain the continued infringement of intellectual property, or the misuse of confidential information.

A motion for an injunction or mandatory order made without notice to the opposing parties can often be heard by the court within a matter of days. If the party seeking such an injunction or mandatory order is ultimately successful, such that the court issues a temporary or interim injunction or mandatory order, the opposing parties are given the opportunity to have the interim injunction or mandatory order set aside or varied further to a subsequent motion. Such subsequent motions can often be heard within a few weeks of the original interim injunction or mandatory order made without notice (or even sooner than that if the urgency of the situation so dictates).

An injunction or mandatory order that is made on notice (i.e. because it is not urgent, or because providing notice of the motion for the injunction or mandatory order would not undermine the purpose of the injunction or mandatory order itself) can often be heard within one to three months (depending on the complexity of the factual and legal issues relating to the motion for the injunction or mandatory order).

Other forms of common interim relief include the following:

- an order relaxing the rules related to the service of court documents;
- an order striking out those portions of a pleading or an affidavit that make allegations that are frivolous or vexatious;
- an order for a Certificate of Pending Litigation that is registered on title to property and therefore puts prospective purchasers, mortgagees, etc., on notice that there is an ongoing lawsuit relating to the property in question;
- an order setting a timetable for the litigation, or requiring a party to comply with a timetable;
- an order requiring a party to produce relevant documents;
- an order requiring a party to answer a question that the party refused to answer on an examination for discovery; and
- an order requiring a plaintiff to pay money into court.

An appeal of an order made on a motion for interim relief must generally be commenced within ten days of the date of the order.

Generally, individuals may, as of right, represent themselves on motions for interim relief. On a motion for interim relief, a corporation typically must be represented by a lawyer (which includes an in-house lawyer) unless the corporation obtains leave of the court to represent itself (e.g. to be represented by an officer, director, or shareholder of the corporation).

Prejudgment attachments and freezing orders

Provincial superior courts and the Federal Court can grant interim freezing orders, known as *Mareva* orders, which restrain a defendant from disposing of property prior to judgment. Canadian courts issue *Mareva* orders to prevent possible abuses of process and/or frustration of court-ordered remedies, as would be the case where a defendant is dissipating, or is likely to dissipate, assets so as to frustrate the enforcement of any potential judgment against the defendant.

Motions for a *Mareva* order are brought after a proceeding has already been commenced. That said, such motions can be brought:

- before a defendant has been served with the claim; and
- without notice to the defendant in order that the motion may achieve the objectives set out in the previous paragraph.

A *Mareva* order is an interim order that merely preserves a defendant's assets until the matter can be resolved on its merits. Accordingly, once a plaintiff obtains a *Mareva* order, it is incumbent on a plaintiff to seek to obtain judgment on the merits of the case.

The criteria for the issuance of a *Mareva* order are similar to the criteria for the issuance of other forms of interim relief. Specifically, to obtain a *Mareva* order, the moving party must demonstrate the following:

- a strong *prima facie* case (i.e. a strong case at first glance);
- that the defendant has assets in the jurisdiction; and
- that there is a serious risk that the defendant will remove property or dissipate assets before judgment.

Plaintiffs can be held liable for any damages caused to the defendant by the *Mareva* order. In addition to satisfying the above test, a plaintiff seeking a *Mareva* order must undertake to the court that it will compensate a defendant affected by the *Mareva* order in circumstances where:

- the defendant suffers damages as a result of the *Mareva* order, and
- the court later finds that the *Mareva* order should be set aside or should not have been granted in the first place.

The reach of a *Mareva* order is broad: it can apply to personal effects, bank accounts, real estate, shares, and income streams, among other things.

Costs

Where a party to a Canadian proceeding is successful in obtaining relief in the proceeding (or in some interlocutory step in the proceeding, such as on a motion), the court will generally require any parties that opposed the relief to pay a portion of the successful party's costs, namely, legal fees and disbursements (e.g. photocopying expenses, process server fees, experts' fees, etc.).

Where the parties have had partial success in the proceeding (or some step in the proceeding), courts may award costs having regard to the parties' relative success. Though it happens rarely, courts may decline to award a successful party its costs where the court finds that the successful party's conduct was objectionable.

It is unusual that a successful party will recover all of its costs from the opposing parties. By default, a successful party is entitled to costs on a partial indemnity or party-and-party basis. While there are variations among jurisdictions and across levels of court, costs on a partial indemnity basis are typically 25-50% of the successful party's actual legal costs. In rare circumstances, parties may recover costs on a substantial indemnity or solicitor-and-client basis. Where this is the case, the successful party may be awarded 60-75% of its actual legal costs. Substantial indemnity costs may be awarded where the conduct of the unsuccessful party was reprehensible (as might be the case where an unsuccessful plaintiff's accusations of fraud were found to be completely devoid of merit, or where the conduct of an unsuccessful party unnecessarily increased the time and expense of the proceedings).

Where a party rejects an offer to settle, and then obtains a result at trial that is equal to or less favorable than the rejected offer, adverse costs consequences will normally accrue to the party. The rationale behind this approach is that the party rejecting the offer did not obtain a better result at trial and unnecessarily caused all parties to incur the additional expense of trial.

Court fees (i.e. fees paid directly to the court for such steps as commencing a lawsuit, defending a lawsuit, or bringing a motion) are generally not more than CAD400 per procedural step. A party that succeeds in its lawsuit (or on some smaller step in the lawsuit, such as a motion) is generally able to recover its court fees from the unsuccessful parties.

Class actions

In all Canadian jurisdictions, a representative or class proceeding may be commenced by a person as a representative of numerous persons who have a similar interest in the proceeding. A similar interest does not need to arise out of the same action or transaction, but requires a shared interest in the determination of some question of law or fact.

The action does not proceed as a class action unless and until it is certified on a certification motion (or, in Quebec, an authorization motion). On such a motion, the issue is not whether the class action is likely to succeed on the merits but, rather, whether a class action is an appropriate manner of proceeding. The following are some of the requirements for certification of an action as a class action:

- there is an identifiable class of two or more persons;
- the claims of the class members raise common questions of law or fact;
- a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and
- there is a representative plaintiff who is well suited to represent the interests of the class.

In Canadian jurisdictions other than Quebec, parties to a certification motion often file voluminous evidentiary records that may include experts' reports. Where this is the case, the certification motion may stretch out over several days. In an authorization motion in Quebec, however, the facts alleged by the plaintiff are taken to be true, the motion may only be contested orally, and the defendants require leave of the court to file evidence. For this reason, Quebec is often seen as being a friendly jurisdiction for the institution of a class proceeding.

A certification motion may proceed in two stages. At the first stage, the court will consider the above factors to determine the threshold issue as to whether the proceeding is appropriate to proceed procedurally as a class action. At the second stage of the certification motion, the court may determine the description of the class and define the common issues.

If the court certifies the proceeding as a class action it will provide direction as to how class members are to receive notice of the class action. Once they receive notice, class members can choose to opt out of the class action. A class member who opts out of the class will not share in any award or settlement in the class action, and will not be bound by any order made in the class action. Having opted out, they may pursue their claims on an individual basis or simply choose not to pursue them at all.

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Chile

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Overview of court system

Chile is a civil law country with codified laws where judicial decisions do not constitute law or precedent, even though several procedures have incorporated certain elements of judicial decisions as precedent (for example, labor law). Nevertheless, jurisprudence or case law is of the utmost importance in civil law.

Chile's basic court system is arranged like many other civil law systems, with Ordinary Courts, Appellate Courts and a Supreme Court. Ordinary Courts' jurisdiction is limited to the smaller territorial-administrative divisions, Appellate Courts oversee all Ordinary Courts from a wider determined territory and the Supreme Court exercises jurisdiction over the national territory. Special courts also play an important role in our court system. These include: Local Justice Courts, Family Courts, Labor and Employment Courts, Tax and Customs Courts, Public Procurement Court, Environmental Courts, Industrial Property Court and Antitrust Court.

With the increasing complexity of the matters faced by the courts, there is a growing specialization of the courts in Chile. The most concrete example is the Supreme Court, which counts which has four different specialized chambers: civil and commercial; criminal; public and administrative and labor and employment law. Court proceedings are generally public, except where court proceedings may be confidential, namely cases involving:

- public or social interest;
- family law;
- information protected by the right to privacy; and
- arbitration cases.

Limitation

The general statutory limitation period for filing civil claims is five years from the date when the cause of action arose but such a term is shorter for specific types of claim (e.g. the limitation period for bringing a tort claim is four years and limitation for enforcement procedures is three years).

Procedural steps and timing

Civil and commercial procedures are, by the Code of Civil Procedure, applicable to civil litigation proceedings and other matters for which no specific procedural rules exist. Trials by jury do not exist in our system and all controversies are resolved by a judge or by a Commission.

All proceedings are initiated by a claim or interim relief, which must state the general law applicable and the facts from where the conflict arises. As a general rule, representation by an attorney in civil proceedings is mandatory.

In the ordinary procedure, the plaintiff must serve the defendant with the filed petition but has no mandatory period to serve it. The defendant can file a response, and eventually a counterclaim within 18 days, or more, depending on where the claim is served. Afterwards,

the plaintiff is entitled to reply and the defendant to counter-reply, and these writs must be filed within six days of the counterparty writ being served. This stage is known as the discussion stage. With the final writs of this stage being served, the court must summon a mandatory conciliatory hearing that:

- will take place before the court; and
- shall be scheduled in a specific time frame that cannot surpass 15 days after the court has informed the resolution that summons both parties to the mandatory conciliatory hearing.

In case the parties fail to reach an agreement at the conciliatory hearing (it is very rare that parties reach an agreement at this stage), the judge can choose between sentencing or receiving the next stage, the probationary or evidence stage.

This stage begins with a judge's resolution establishing the matters that need to be proven by the parties.

The parties have five business days, counting from the notification of the judge's resolution, to submit a list of any witnesses they wish to rely on. The timeframe for this evidence presentation phase may vary depending on the territory in which it is going to be submitted, but the minimum for this type of procedure is 20 days. It could be longer if an obstacle impedes submitting evidence or when certain evidence must be retrieved or rendered in a foreign jurisdiction.

After the evidence presentation phase, the parties have the opportunity to file their closing arguments within a 10 day period. Before rendering judgment, the Court might consider it necessary to request further evidence.

The timeframe between the claim file and judgment will always depend on the complexity of the case and the disposition of the counterparty to cooperate. It may take from nine months to two or three years.

There are many special procedures for specific matters that modify these rules.

Disclosure and discovery

The general rule in Chilean civil litigation is that parties submit their own evidence. Nevertheless, the eventual plaintiff may request a Court to grant a pre-trial submission of evidence to the eventual defendant, though this pre-trial request is confined to the cases invoked by the law (affidavits; exhibition of an object or document, such as accounting books, testaments, public documents, property titles, among others; and, private document signature recognition).

Furthermore, pre-trial requests of evidence may also involve personal inspection by the judge, expert opinions or interrogations. This is because there are serious circumstances that advice granting the pre-trial request or that certain elements or situations could easily disappear.

All pre-trial requests must state which civil claim the plaintiff will file and a brief explanation of the arguments and basis of the claim to be filed and the necessity of the pre-trial request.

Default judgment

In Chile, default judgments are uncommon and they only apply in one specific proceeding. This specific proceeding is known as "summary" and its main characteristic is the suppression of certain elements of the "ordinary" civil proceeding, as for example all the writs that must be filed in the discussion stage after the claim filing (in this case all the discussion stage is encompassed in a single audience). If the defendant does not respond the plaintiff's claim within five days of the claim being served, the plaintiff can request a default judgment which will be granted if the plaintiff successfully argues there are grounds for it.

Therefore, in the event that the defendant does not file a response, the general rule is that all proceedings continue under the presumption that the defendant denies some or all of the plaintiff's claims, with the consequence that all the plaintiff's claims must be proven.

Appeals

Appeals can be filed against certain decisions of an Ordinary Court and against the final judgment. Parties must file an appeal within five or 10 days – depending of the nature of the decision - from the date the judgment is served to the parties. The Appellate Court will analyze the appeal writ and will reject it if it does not contain the minimum requirements established by the law. If not rejected, the

Appellate Court will judge and rule the case, or will establish a hearing where both parties may present their cases.

Appeals are decided by a commission of three judges.

Against Appellate Court decisions, the parties can file two remedies before the Supreme Court. These remedies will be granted if the party successfully demonstrates a wrong application of the law *(casación en el fondo)* or a procedural law infringement *(casación en la forma).*

The timeframe of the Supreme Court to grant a ruling depends mainly on the complexity of the matter. The average duration of an appeal decision is one year. The Supreme Court remedies take the same amount of time.

Interim relief proceedings

The Chilean regulation states that the plaintiff may request the following interim relief measures:

- Judicial restraint of the asset or object on which the claim is based, if there are grounds to suspect the asset or object could deteriorate or be lost;
- Appointment of a controller or guardian;
- Retention of goods or assets, when there are grounds to suspect its diversion, destruction or concealment;
- Prohibition to sign contracts or other agreements regarding designated assets; or
- Other measures requested by the plaintiff and granted by the court.

For these measures to be granted by the Court the plaintiff must fulfil the following requirements:

- File documents that constitute a serious presumption of the right that the plaintiff claims *(Fumus Boni Iuris)*;
- State an irreparable harm or danger that a party may suffer should the relief not be granted before the end of the proceedings *(Periculum in Mora).*

All interim reliefs will be granted on the assets or goods that suffice to fulfil the specific amount the plaintiff is claiming, which will be determined by considering the documents the plaintiff has produced. In urgent and severe cases, the Court could grant an interim relief for a maximum period of 10 days without such documents and if the plaintiff warrants any potential liability.

As per this requirement, all interim reliefs are essentially temporary and could be overridden if the counterparty files a warranty or if the potential risk is no longer as insurmountable.

Interim relief measures can be sought at any time: before proceedings have commenced, during the proceedings and afterwards, while pending execution of the judgment. In any case, the alleged right may be challenged at a later stage in the proceedings.

In urgent cases, an interim relief may be sought without the opposing party's involvement. If the Court concedes the relief, the plaintiff must serve the decision to the defendant within a five day period, which the court could extend to a longer period with sufficient grounds. If the defendant is not served in this period, the relief will have no effect.

Prejudgment attachments and freezing orders

In Chile, prejudgment orders and freezing injunctions do not have the same extension or ends as in common law jurisdictions, and they are measures that the plaintiff can request to the Court before filing a claim in order to prepare for an eventual trial.

Prejudgment attachments can be classified as preparatory, interim reliefs or probationary. The classification most similar to the common law institution of prejudgment orders and freezing injunctions would be those classified as interim reliefs, therefore the principles noted in Interim relief proceedings apply to those. We will refer to this classification below.

The plaintiff may request prejudgment attachments and freezing orders as provisional remedies before the court that will have jurisdiction to hear the merits of the main claim.

For a prejudgment attachment/freezing order to be granted, the plaintiff must include in its application: a brief statement of the right which the plaintiff is seeking to protect, the specific claim that will be filed; the specific amount that will be claimed (to establish the warranty the defendant may file to override the relief); and the risk of loss to which the plaintiff is exposed or irreparable harm that the

plaintiff will suffer if the relief sought is not granted.

Following the plaintiff's filing of an application seeking an attachment/freezing order, the plaintiff must serve the application within a five day period (or any other period granted by the Court). Afterwards, the plaintiff must file a claim within a 10 day period, though the court may extend it up to 30 days, if the plaintiff argues it is necessary. If the claim is not filed in time, if the plaintiff does not request the relief to be maintained or the Court decides not to maintain the relief, the plaintiff will be held liable for any damage to the defendant.

As noted in Interim relief proceedings, where the plaintiff also argues that the prejudgment attachment/freezing order must be granted urgently, the provisional remedy can be enforced by the judge without hearing the counterparty. If the court concedes the relief, the plaintiff must serve the decision to the defendant within five days, that could be extended if sufficient grounds are submitted. If the defendant is not served in this period, the relief will have no effect.

The plaintiff can be held liable for damages caused to the defendant when the attachment is based on an urgent request and:

- the plaintiff does not file a claim within the legal period;
- the plaintiff files a claim in time, but does not request the attachment/freezing order to be maintained; and
- the court rejects to maintain the attachment/freezing order.

Costs

In Chile, the unsuccessful party may be responsible for paying the litigation costs of the successful party. Litigation costs include:

- the judicial fees; and
- the other party's attorney's fees.

When awarding attorney's fees, the judge may consider:

- the length of the proceedings;
- the nature of the claim and complexity of the proceedings;
- the professional attention to the case and degree of involvement; and
- the work and study provided by the lawyers.

Unlike some other jurisdictions, in Chile the costs are usually very low without representing the costs and expenses that the parties have actually incurred.

Class actions

In Chile there is no general civil regulation for class actions. However, a range of procedures are available to enable multiple parties to bring claims. A number of claimants can simply bring a claim together, where the claims can be conveniently disposed of in the same proceedings. Multiple claims arising from common issues of law or fact may be also managed together.

An exception to this is the Consumer Protection Act, which establishes that consumers may file class actions regarding certain matters such as: retail, transportation, entertainment, certain construction and real estate, electrical services, sports services, education, sanitary services and TV services.

A consumer class action may be filed by:

- the Consumer Protection Agency;
- a consumer's association; and
- a group of 50 or more consumers that have suffered the same damage or abuse.

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China

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Overview of court system

The People's Republic of China (PRC) is a civil law jurisdiction and the judicial system is organized into four levels:

- the Basic People's Courts;
- the Intermediate People's Courts;
- the High People's Courts; and
- the Supreme People's Court.

Usually, major foreign-related cases fall within the jurisdiction of the Intermediate People's Court. A major foreign-related case is a case: (i) in which either the claimant or defendant is a foreign party from outside of Mainland China; and (ii) which involves a large claim, has complex merits, or involves a large number of parties. In practice, different courts apply different standards for determining what constitutes a large claim.

The litigation in PRC is generally all in the official language of PRC, which is Chinese Mandarin. However, in areas which are predominantly populated by ethnic minorities court proceedings can be conducted in the language commonly used by the ethnic minority in that area.

Mainland China is not a common law jurisdiction, therefore previous court judgments have no binding force in subsequent cases. This means that when considering regulations, lower courts are not bound by higher courts' decisions. However, lower courts do give weight to the judgments and reasoning of higher courts.

Limitation

In the PRC, the general limitation period for civil claims is three years. Special limitation periods apply to certain causes of action. The period starts from the day when the claimant knows or should have known that his or her right has been infringed upon and who the defendant is.

Procedural steps and timing

In the PRC, parties do not have to be represented by a lawyer in order to commence civil proceedings. Generally, a civil lawsuit is commenced by filing a statement of claim. The statement of claim must set out the cause(s) of action and claim(s), and needs to be supported by documentary evidence. The court has seven days to review the statement of claim and its supporting evidence and to decide whether or not to accept the case. Where the case is accepted, the court will serve a copy of the statement of claim on the defendant within five days of accepting and this will constitute giving notice of the claim to the defendant. Generally, where they are domiciled in the PRC, the defendant must file its statement of defense with the court within 15 days of receipt of the notice of the claim. A defendant who has no domicile in the PRC has 30 days to file its statement of defense. Once the defendant has filed their statement of defense, the court will send a copy to the claimant within five days of receiving it.

The court will also set a period for the submission of evidence. During this period:

- all evidence should be submitted;
- the defendant is entitled to file any counterclaim(s) they may have against the claimant, before the end of oral hearing(s); and
- both parties are entitled to submit a written application for an extension of time, provided they do so before the relevant period expires.

After the period for submission of evidence has concluded, an oral court hearing (i.e. a trial) will be scheduled. The timing of the hearing will depend on the court's workload, and the parties will be given three days' notice of the hearing. The court hearing usually consists of two parts which are: (i) the investigation of the facts; and (ii) the presentation of arguments. During the investigation of the facts, the parties present their own case and present evidence, including oral evidence given by factual witnesses. The evidence is then cross-examined by the other party and is also examined by the court. The presiding judge will then summarize the issues in dispute and the parties will put forward their respective further arguments on those issues. The law clerk will prepare a transcript of the hearing.

A judgment must be given within six months of the court's acceptance of the case and can be given at the end of the oral hearing. The time limit to issue the judgment can be extended for six months with the approval of the court's president, and the court may seek further extensions from a higher court. A simple civil claim to which ordinary procedure applies and in respect of which no extensions are sought is generally resolved within six months of the court's acceptance of the case.

Disclosure and discovery

In the PRC, although parties must substantiate their cases with evidence, in principle they are free to determine what evidence they want to use. A court may, however, order a party to submit certain additional evidence if it considers it necessary. Failure to comply with the court's order may cause the court to draw adverse inferences. Further, whilst there is no concept of legal privilege in the PRC, any evidence containing state secrets, personal information or business secrets will not be publicly presented during an open hearing.

Under the PRC Civil Procedure Law, a party may request the court to investigate and collect evidence on its behalf if the party and its representatives are unable to collect it for objective reasons, including because: (i) it is archived by state authorities and the party has no right of access to it; or (ii) it contains national secrets, trade secrets or personal information. The court is also authorized to investigate and collect evidence which the court deems necessary. Procedurally, if a party requests the court to investigate and collect evidence on its behalf, the requesting party should submit a written application stating:

- basic information of the person or entity to be investigated (name, address, workplace, etc.);
- the evidence to be investigated and collected;
- the reasons for making the request;
- the facts to be proved by the evidence; and
- the definite clues.

Pursuant to Article 95 of Interpretation of the Supreme People's Court on Application of the PRC Civil Procedure Law (the SPC Interpretation on Civil Procedure), the request for collection of evidence should be rejected if the evidence requested is unrelated to the facts to be proven, is meaningless for proving the facts or if the court considers that it is unnecessary to investigate it.

It should be noted that, in practice, courts rarely grant requests for the collection of evidence. This is partly due to the vaguely defined concept of "objective reasons", which leaves the discretion to the court, and partly due to the fact that such requests will place additional burdens on the courts, which already struggle with heavy caseloads.

Under the law of the PRC, interim relief for evidence preservation is available both during and prior to the commencement of legal proceedings if evidence is at risk of being destroyed or may become difficult to obtain at a later date. A party can apply to the competent court for evidence preservation, and the court can also take preservation measures on its own initiative. The party requesting the evidence preservation will usually be required by the court to provide security in case such evidence preservation causes losses to other related parties.

Theoretically, the plaintiff can apply to the court for the court's investigation and collection of evidence before the commencement of proceedings. However, the court rarely grants such applications before the commencement of proceeding.

Default judgment

Pursuant to Articles 146, 147 and 148 of the PRC Civil Procedure Law, the court may grant default judgment when:

- a defendant refuses to appear in court without justifiable reasons after being summoned, or the defendant leaves the courtroom during the oral hearing without permission from the court;
- if the defendant has filed a counterclaim, the claimant refuses to appear in court without justifiable reasons after being summoned or leaves the courtroom during the oral hearing without permission from the court; and/or
- the claimant requests withdrawal of the action before a judgment is made, but the court decides not to grant the withdrawal and the claimant refuses to appear in court without justifiable reasons after being summoned.

If the default judgment is issued by the first instance court, the party against whom the default judgment is imposed may appeal. As the judgments issued by second instance courts are generally final, a default judgment issued during an appeal process will not usually be subject to challenge. That said, if there is a material procedural defect with a default judgment (for example, the party has not been served with a summons), the party may challenge the default judgment by applying for a retrial.

When considering an application for default judgment, the court will examine the merits of the claim. For parties who are domiciled in Mainland China, the period for appealing against a default judgment (appeal period) is the same as the period for appealing against normal judgments, which is 15 days. For parties who have no domicile in Mainland China, the appeal period is 30 days.

Appeals

Judgments and orders made by the courts below the Supreme People's Court can be appealed once to the higher court, but as noted above, judgments and orders of second instance courts are generally final and binding upon the parties. After a second instance judgment, the parties may only apply to the higher court for a retrial in exceptional circumstances. The case will need to have material defects in the previous proceedings or be of significant interest from a policy, legal or social justice perspective before a retrial can be granted.

An application to appeal a judgment should be filed within six months from either: (i) the effective date of the judgment or ruling; or (ii) the date when the party seeking to appeal knows or should have known the particular circumstances in which retrial should be granted.

Appeal proceedings take place in two stages. Firstly, the higher court will examine whether there are sufficient reasons and/or evidence to initiate the retrial process. During this phase of proceedings, if the party applies for retrial on the basis that *"[t]he basic facts found in the original judgment or ruling are not evidenced"*, the court will need to examine the facts, evidence, and the merits in order to determine whether this allegation is true. If the party applies for retrial on the basis that *"[t]he formation of the tribunal is illegal or any judge who shall be disqualified in accordance with law fails to be disqualified"*, then the court will not need to examine the merits and/or facts of the case but only review the procedural defect.

Secondly, once the higher court grants the initiation of the retrial, the case is completely reconsidered. The new trial proceedings start from the very beginning – a new tribunal will be formed, the parties may submit their statements and evidence again, and hearings on the merits will be arranged. The higher court may, at its discretion, conduct retrial of the case by itself or may designate another court, including the first-instance court, to hear the case. The judgment which is handed down at the conclusion of the retrial is deemed to be a first instance judgment which is appealable.

Parties can file an appeal against a first instance judgment for alleged fact-finding errors or errors in the application of the law or procedure within 15 days of notification of the judgment. The appeal period would be 30 days for parties who have no domicile in Mainland China. In these circumstances, the higher court would review both the facts and the application of the laws and, if necessary, hold an oral hearing. Generally speaking, an appeal case is completed within three months of the court's acceptance of the appeal. If an extension is needed, approval from the court's president is required. An appeal suspends the effect of the appealed judgment, meaning that the judgment of the first instance would not become effective/enforceable directly if the case was appealed.

Interim relief proceedings

Under the law of the PRC, interim relief is mainly granted for evidence preservation, asset preservation, specific performance or advance execution. However, specific laws also provide for other special types of interim relief. For example, the PRC Special Maritime Procedure Law provides certain types of interim relief applicable to maritime claims.

Interim relief can be granted *ex parte* (i.e. without notice and not in the presence of the parties) before or during a litigation or arbitration. The applicant will usually be required to file a written application with supporting documents to the competent court, but the specific procedure depends on the type of interim relief that a party is seeking to obtain. For instance, a detailed outline of the procedure for an application for an asset preservation order is provided in prejudgment attachments and freezing orders.

Interim relief is generally only granted before the commencement of court proceedings or an arbitration in circumstances where the evidence or property at stake would be irreparably damaged without the interim relief being granted. Before interim relief is granted by the court, the applicant is usually required to provide security. Generally, the court shall make a decision about whether or not to grant interim relief within five days of accepting the application or after security has been provided. In urgent circumstances, the court must make the decision within 48 hours. Once pre-action interim relief is granted, the applicant is required to commence arbitration or court proceedings within 30 days from the date of enforcement of the interim relief order. If this deadline is not complied with, the court may revoke the pre-action interim relief. Representation by a lawyer is not mandatory for interim relief applications.

Should any party in the proceedings wish to challenge the interim relief order, they can apply to the court for reconsideration within five days of receipt of the ruling, and the court must then review and decide the reconsideration application within ten days of receiving it. Enforcement of the interim relief order is not suspended during the reconsideration process.

It is worth noting that on 1 October 2019, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings between Hong Kong and Mainland China (Arrangement) came into force, pursuant to which parties to certain institutional arbitrations seated in Hong Kong are entitled to apply through those institutions for interim relief from the People's Courts in Mainland China. The Arrangement makes Hong Kong the first and only seat of arbitration outside of Mainland China to have access to interim relief from the People's Courts in Mainland China.

Prejudgment attachments and freezing orders

In China, prejudgment attachments and freezing orders are referred to as asset preservation orders. Asset preservation is an important category of interim relief under PRC law. In the PRC, asset preservation is equivalent to freezing orders. It consists of an *ex parte* procedure which (as prescribed in various laws) allows applicants to, among other things, seal, seize and freeze assets. Like other types of interim relief, a party can apply for asset preservation both during and prior to the commencement of legal proceedings on the basis that *"a party's conduct or other reasons will make enforcement of the arbitration award/judgment difficult or cause other loss and damages to the applicant."* When necessary, the court is also empowered to make asset preservation orders at its own discretion.

Applications for asset preservation must be made to a court: (i) located in the same place as the properties which are to be preserved; (ii) located where the respondent is domiciled; or (iii) which has jurisdiction over the case. To apply for asset preservation, the party must submit a written application and provide relevant supporting documents. The written application should detail:

- information relating to the applicant and the counterparty;
- the request for asset preservation;
- the facts and reasons on which the asset preservation application is based;
- the requested value of the asset to be preserved;
- clear information on, or specific features of, the asset to be preserved; and
- the need to provide security.

The court may demand the requesting party to provide security if it deems this necessary. The amount to be provided as security will usually be limited to no more than 30% of the requested value of the asset to be preserved.

Asset preservation is limited to the assets referred to in the written application or assets related to the case. The types of assets that can be subject to asset preservation include:

- immovable property, such as land or buildings; and
- movable property, such as funds in a bank account, vehicles or other objects owned by the party against whom the asset preservation application is being made.

When the asset preservation order has been granted pre-action, the claimant must file the relevant claim subsequently. As with any other interim relief measure granted pre-action, if the claimant fails to commence a court proceeding or arbitration within 30 days of the court's

asset preservation order, the court shall lift the order.

The claimant may be liable for any losses caused to the defendant arising from the preservation of the defendant's assets if the asset preservation order was imposed in error.

Costs

Pursuant to Article 13 of the Measure on the Payment of Litigation Costs, the claimant must pay fees known as "case acceptance fees" to the court at the time of filing the claim and it must do so within seven days of the court's notification of payment. The acceptance fees are calculated by reference to the sum in dispute (or pursuant to the relevant laws if it is a non-property case). For example, for a monetary case where the sum in dispute is CNY1 million, the case acceptance fee would amount to CNY13,800 and would be calculated by adding together the costs under each of the staggered tiers, as set out below:

THE AMOUNT CLAIMED	APPLICABLE RATE	FEES
For any amount no more than CNY10,000	A fixed fee	CNY50
For any amount above CNY10,000 but no more than CNY100,000	2.5%	CNY2,250 (90,000 x 2.5%)
For any amount above CNY100,000 but no more than CNY200,000	2%	CNY2,000 (100,000 x 2%)
For any amount above CNY200,000 but no more than CNY500,000	1.5%	CNY4,500 (300,000 x 1.5%)
For any amount above CNY500,000 but no more than CNY1 million	1%	CNY5,000 (500,000 x 1%)
Total case acceptance fees:		**CNY13,800**

Additional costs might be incurred if evidence is obtained outside of the PRC, where translation, notarization and legalization of the evidence is required. The court acceptance fees and other such out-of-pocket expenses would be paid by the unsuccessful party.

A court will also charge when a party requests it to enforce a judgment, an interim relief order or an arbitral award. Such fees are also calculated by reference to the sum in dispute.

Similar to the principle of "costs follow the event" in common law jurisdictions, as a general principle, the costs of an action are usually awarded to the successful party. However, lawyers' fees fall entirely within the discretion of the court. The court may wish to follow the recommended fee scale issued by the government, which might be significantly lower than the actual lawyers' fees. If the scale is used, the successful party may only be able to recover part of its lawyer's fees.

Class actions

In the PRC, a civil action involving two or more claimants and/or defendants is referred to as a collective action rather than a class action.

Amendments made to the 1991 Civil Procedure Law, effective from 1 January 2013 (2012 Amendments), introduced a provision regarding public interest collective actions, under which an authority or organization prescribed by law may institute a collective action for conduct that pollutes the environment, infringes upon the lawful rights and interests of a large group of consumers or otherwise damages public interest.

More recently, by virtue of the amended Civil Procedure Law, effective from 1 July 2017 (2017 Amendments), the organizations that are entitled to bring public interest collective actions are no longer restricted to those prescribed by the law. The new provision allows the

people's procuratorates (which are the PRC's prosecution organs) to file a collective action where there is no such organization authorized by law to bring the action or such organization fails to do so.

To initiate a collective action, the following four conditions need to be satisfied:

- there are two or more claimants or defendants;
- the subject of the cause of action for each party is the same, or is of the same kind;
- the court considers that such multi-party claims may be dealt with collectively; and
- the parties involved consent to such collective action.

If the number of litigants on one side of a collective action is large, these litigants may be represented by two or no more than five representatives. Pursuant to the SPC Interpretation on Civil Procedure:

- if there are more than ten litigants, that is considered large;
- if the litigants fail to select any representatives, the court may nominate representatives for the litigants or designate representatives at its discretion; and
- each of the representatives may be represented by one or two attorneys.

If the claimants or defendants under a collective action cannot be fixed at the time the case is filed, potential participants may join the action by registration as follows:

- the court may issue a public notice, specifying the circumstances of the case and notifying others with similar interests to register with the court;
- the People's Court has discretion to determine the term of public notice on a case-by-case basis, although this term must not be less than 30 days;
- potential participants who seek to register with the court should demonstrate their legal relationship with the opposing party and the damages they have suffered. Those failing to do so would not be registered but could still file a separate lawsuit; and
- the court's decision on the collective action will bind those who have registered with the court. Subject to the court's interpretation, such decision may also apply to those litigants who do not register with the court but who bring similar claims within the statutory limitation period.

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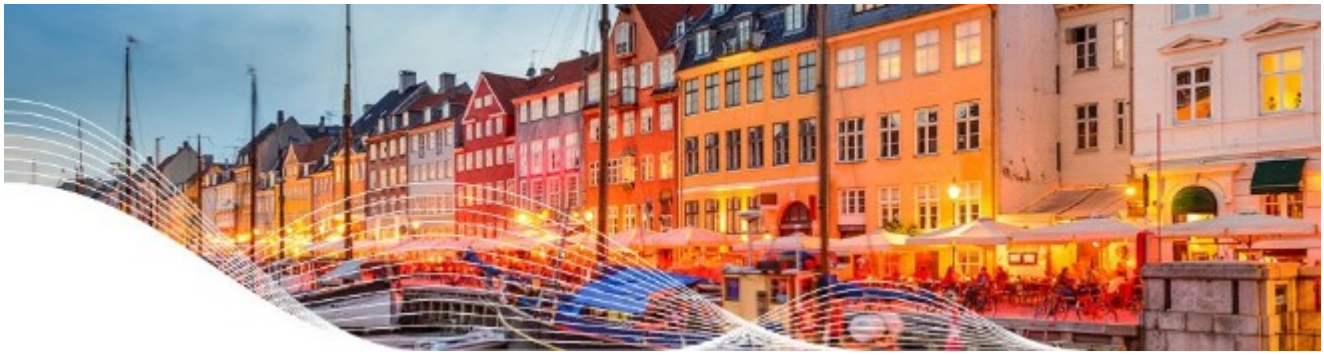

Denmark

Last modified 20 July 2023

Overview of court system

Denmark is a civil law jurisdiction. There are three levels of civil courts in Denmark.

- The Supreme Court (one);
- High Courts (courts of appeal) (two); and
- District Courts (24).

In addition, there are two specialized courts: the Maritime and Commercial High Court and the Land Registration Court.

In addition, the courts of Denmark include the Court of the Faroe Islands, the Courts of Greenland, the Appeals Permission Board, the Special Court of Indictment and Revision, the External Activity Review, the Judicial Appointments Council, and the Danish Court Administration.

Most civil cases start at a District Court level. An individual court's jurisdiction to hear a dispute usually depends on the domicile of the defendant, but other criteria may apply depending on the type of dispute.

The Danish legal system is based on the so-called "two-tier principle". This means that a party to a case may appeal the ruling of one court to a court of a higher instance.

The main source of law in Denmark is legislation, and Danish law is characterized by extensive and systematic written legislation. Other important sources of law include case law, administrative practices, and legislative materials. These sources also hold significant importance in the interpretation of the law and the establishment of applicable law.

Particularly, case law plays an important role in legal interpretation and can influence the application and understanding of the law in Denmark.

In Denmark, legal precedent is not considered binding on lower courts. Each case is decided on its own merits, and lower courts have the discretion to interpret and apply the law according to their own judgment.

However, Danish courts do recognize the value and persuasive authority of precedents set by higher courts, especially decisions of the Supreme Court. The decisions of higher courts, although not binding, are highly influential and are typically followed by lower courts unless there are strong reasons to depart from them.

The language of the courts in Denmark is predominantly Danish. However, in certain cases, the general rule can be deviated from, and, for example, permission can be granted to have a witness testify in English or one of the other Scandinavian languages without the use of an interpreter.

Limitation

The general limitation period for civil claims is three years, depending on the nature and the subject matter of the claim.

The date on which the limitation period begins to run differs depending on the nature and the subject matter of the claim, e.g. whether the claim is in tort or contract.

In general, the limitation period starts from the earliest point at which the claimant could demand fulfilment of the claim, such as from the occurrence of the damage or the time of the breach of contract. However, if the claimant was unaware of the claim or the debtor, the limitation period runs from the day the claimant became aware or should have become aware of it. However, this rule is also subject to the absolute limitation periods, which depend on the nature of the specific claim at hand.

Procedural steps and timing

In Denmark, legal representation is not mandatory, which means that anyone can, in principle, represent themselves in court. However, there are certain statutory exceptions to this rule (e.g., certain family law cases, guardianship cases, etc.), and the court may also require a party to have the case conducted by an attorney if the court deems it appropriate based on the circumstances of the case.

A civil lawsuit in Denmark starts with a writ of summons filed by the claimant.

The Danish Administration of Justice Act contains legal requirements regarding the contents of the writ of summons. In general, the writ must contain the claim, its factual and legal substantiation and a list of evidence.

The writ is then served on the defendant by the court. The defendant receives instructions from the court as to how to proceed. The defendant is normally granted two weeks to file its statement of defence, but this deadline can be prolonged subject to the defendant's request. The statement of defence must also meet the legal requirements specified in the Danish Administration of Justice Act.

After filing the statement of defence, the court typically convenes the parties to a pre-trial hearing. The court will specify the topics and questions to be discussed at the hearing. The main purpose of the pre-trial hearing usually is to set the timeframe for the remainder of the proceedings and to concentrate the proceedings on the issues in dispute.

In a straightforward civil lawsuit, the time period from serving the writ until obtaining a judgment is usually approximately eighteen months.

Disclosure and discovery

The parties must substantiate their claims and statements with evidence, but they are generally free to determine which evidence they want to rely on.

Evidence will be evaluated subject to the court's sole discretion. The court will make no investigations or assess other evidence than what has been produced and presented by the parties during the proceedings.

The court may order a party to submit certain evidence. A party may also request evidence to be submitted by the counterparty during the proceedings, but fishing expeditions are not permitted. The party requesting the submission should be specific in its request and prove that the requested evidence is relevant to the matter in dispute.

A party's refusal to submit requested evidence could adversely impact the party's position, as the court may draw adverse inferences from such a refusal.

Parties cannot usually be required to disclose privileged documents.

The presentation of evidence takes place during the main hearing. However, with the court's permission, evidence can also be presented before the main hearing in special circumstances. This typically applies if a party is at risk of losing their evidence (for example, a witness who is not expected to be able to testify during the main hearing due to illness or travel).

It is also possible to obtain evidence before the case is even initiated (taking evidence out of court). In such cases, the party must submit a request to the court, which grants permission if the court deems it appropriate.

Default judgment

If the defendant fails to attend a hearing that they have been called to, the court will render a default judgment in favor of the claimant. This, however, generally requires that the claim is found by the court to be justified based on the statement of claim as presented in the

writ of summons and any other information available to the court.

The same principle applies if the defendant fails to file the statement of defence with the court within the specified deadline, or if the contents of the statement of defence do not meet the specified legal requirements and the statement of defence is, therefore, an unsuitable basis for the hearing of the case. However, the court may grant the defendant time to correct the deficiencies in the statement of defence.

If a default judgment is rendered against a defendant, the defendant can submit a written request to have the case reopened. If the request for reopening is submitted within four weeks from the date of the judgment, the defendant is entitled to have the case reopened. The court may also, in exceptional cases, reopen the case if the request is made later than the four week deadline but within one year from the date of the judgment. In this regard, factors such as the timeliness of the request in relation to the defendant's awareness of the judgment will be considered.

Appeals

A party may appeal with the aim of modification, reversal or remission of the original judgment.

A judgment delivered by a district court may be appealed to the High Court of the district in which the District Court is located.

Judgments delivered by a High Court as the court of appeal (in the second instance) generally cannot be appealed to the Supreme Court (third instance). However, under special circumstances, the Appeals Permission Board may grant permission for a third instance review of the case, particularly when it involves fundamental legal questions.

Judgments delivered by a High Court as the court of first instance may be appealed to the Supreme Court.

A Supreme Court decision cannot be appealed.

The period allowed for appeal is four weeks from the date of the judgment. However, the appeal deadline of four weeks must be considered in relation to the execution deadline, which is generally 14 days after the judgment has been delivered. When the execution deadline expires, the judgment is generally enforceable. If an appeal is initiated before the expiry of the execution period, the appeal has a suspensive effect, meaning that the party is not obliged to comply with the judgment. According to practice, this also applies to declaratory judgments. If the party appeals only after the expiry of the execution period - but within the appeal period - the party is generally obliged to comply with the judgment and, for example, pay the judgment amount to the opposing party.

The appeals process begins with the filing of a notice of appeal with the court whose judgment is being appealed. This court must send the documents of the case to the court of appeal within one week after receipt of the notice of appeal.

The High Court and the Supreme Court in an appeal case will re-examine the facts of the case and reach their own conclusion. In extraordinary circumstances, the Supreme Court can allow witness examinations during the oral hearing. In such circumstances, these examinations will normally take place before the oral hearing and then be presented as written statements to form part of the evidence to be evaluated by the Supreme Court.

Interim relief proceedings

The Danish judicial procedures provide tools to obtain interim relief.

A party can file a request for an interim prohibitory or mandatory injunction order to impose interim relief on the opposing party on a short-term basis. Interim relief measures are often aimed at:

- requiring parties to promptly perform certain acts; or
- prohibiting parties from carrying out certain acts.

Any application for a prohibitory or mandatory injunction must be submitted to the court which has subject-matter jurisdiction. The court may, by way of a prohibitory or mandatory injunction, order the opposing party to temporarily do, refrain from doing or tolerate certain actions.

If the purpose of interim relief is to obtain security for the payment of a monetary claim, an application to this effect must be filed and heard under specific provisions regarding attachment, see further (Prejudgment attachments and freezing orders).

If the purpose of interim relief is to preserve evidence e.g. of an infringement of intellectual property rights, an application to this effect must be filed and heard under separate provisions relating to preservation of evidence.

An application for a prohibitory or mandatory injunction must satisfy the same requirements as those that apply to the contents of a writ of summons. A prohibitory or mandatory injunction may be granted if the applying party proves, on a balance of probabilities or by clear and convincing evidence:

- that the party holds the right for which protection by way of a prohibitory or mandatory injunction is sought;
- that the conduct of the opposing party necessitates the granting of the injunction; and
- that the ability of the party to enforce his right will be lost if the party has to await a full trial.

A prohibitory or mandatory injunction may not be granted if the general provisions of the Danish Administration of Justice Act regarding penalty and compensation and any security offered by the opposing party are deemed to provide adequate protection to the party.

Furthermore, the court may refuse to grant a prohibitory or mandatory injunction if such injunction would cause the opposing party to suffer a detriment or disadvantage, such detriment or disadvantage being clearly disproportionate to the applicant's interest in obtaining the injunction.

The court may decide that the granting of a prohibitory or mandatory injunction is to be conditional on the applicant providing security for any detriment and disadvantage inflicted on the opposing party, as a result of the injunction.

The application for a prohibitory or mandatory injunction is heard at a court hearing where the necessary evidence must be produced. The court will set the time and place of the hearing and notify the requesting party - and where possible, the opposing party - of the scheduled details. Notification may be made by a summons. The court can decide to not notify a party however, e.g. if the purpose of the injunction may be deemed to be lost in case of notification.

If the requesting party fails to attend the hearing, the application will be denied. If the opposing party does not attend, the application may be granted if it is sufficiently justified by the statement of facts and any other information available to the court and the party has been duly summoned or notification has been omitted. The court may postpone the hearing if the court finds the responding party's attendance desirable.

If proceedings concerning the right which is allegedly being infringed have not already been commenced in a Danish or foreign court or before an arbitral tribunal, the party applying for a prohibitory or mandatory injunction must take or commence such proceedings within two weeks of the decision to grant the injunction becoming final.

If the proceedings are commenced in a Danish court, the proceedings must be commenced either in the court which heard the application for the injunction in the first instance or the Maritime and Commercial Court.

Such proceedings may be dispensed with by agreement between the parties. Such agreement cannot be concluded until a final decision to grant a prohibitory or mandatory injunction is available.

A prohibitory or mandatory injunction applies until it is discharged or ceases to have effect.

A district court's decisions relating to prohibitory and mandatory injunctions can be appealed by both parties. The period allowed for appeal is four weeks from the date of the decision. The appeal does not have a suspensive effect on the decisions regarding prohibitory and mandatory injunctions.

Cases regarding interim relief are naturally more urgent than regular civil cases, and therefore, the courts will handle them expeditiously. There is no specific timeframe prescribed by law, but typically, a ruling can be issued at the latest within four to six months after the submission of the request.

If the court grants a prohibitory or mandatory injunction, the court may, if requested by the applicant party, decide at the same time to seize movable property if there are specific reasons to assume that it will be used in breach of the injunction. If the court finds that the application for a seizure order should be heard separately, the court may transfer the issue to a separate hearing in bailiff court, as set out below in Prejudgment attachments and freezing orders.

The bailiff court will assist in securing that interim relief orders are upheld, as set out below in Prejudgment attachments and freezing orders.

Any party that obtains a prohibitory or mandatory injunction based on a right which is later held not to exist must compensate the

opposing party for any loss and / or injury to such party's reputation or feelings. The same applies where, if the right must be assumed not to have existed, the injunction ceases to have effect or is discharged on account of subsequent circumstances.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are types of interim relief.

The request for attachment should be submitted to the bailiff court. It should include details of the underlying principal claim and the circumstances the claimant wants to invoke, as well as supporting evidence. As a general rule, doubt regarding the claim does not preclude attachment, and there is no requirement for the claimant to substantiate or prove the existence of the claim. However, attachment is naturally excluded if it can be assumed that the claim does not exist. Therefore, attachment is carried out unless the defendant can prove that the claim does not exist.

The bailiff court may grant an attachment order as security for monetary claims, provided that:

- the subject-matter claim is deemed to exist;
- it is impossible to execute the claim; and
- the likelihood of recovering the claim later is deemed to be materially reduced.

The assets that can be subject to prejudgment attachment correspond to the assets that can usually be attached in the course of an ordinary execution procedure. Therefore, attachment can be made on the defendant's assets, including cash, real estate, movable property, claims and other assets such as shares etc.

The bailiff court may decide that the granting of a prejudgment attachment is to be conditional on the claimant providing security for any detriment and disadvantage inflicted on the defendant as a result of the attachment.

The attachment can be avoided or ceased if the defendant, subject to the bailiff court's assessment, provides sufficient security for the claim in question.

The attachment can only be made proportionally with the size of the claim.

The attachment must always be followed by a civil claim on the merits. The claim must usually be brought within one week after attaching the assets. If the claim is not brought within the stipulated term, the attachments are lifted. If this happens, or if the claim is dismissed in the proceedings on the merits, the claimant might be liable for any damages caused to the defendant by the attachment(s).

The bailiff court's decisions relating to attachment can be appealed.

Costs

The court fees for a civil lawsuit in Denmark are generally low and divided into two types of court fees:

- a smaller fee for filing the writ of summons / initiating the lawsuit, which must be paid by the claimant when filing the writ of summons. A defendant filing a counterclaim must also pay a smaller fee; and
- a fee to be paid before the oral hearing, which amount depends on the type of dispute and the value of the claim in question (range is typically between DKK3,000 – 160,000). A defendant filing a counterclaim must also pay such a fee.

In terms of recovery of attorney fees and other disbursements, the losing party of the dispute will usually have to pay all of its own costs, the court fees and the reasonable costs incurred by the successful party of the dispute, which will be determined by the court.

If the parties are partly successful and partly unsuccessful, the court may order them to cover the costs pro rata in accordance with their relative success or carry their own costs.

Class actions

Civil cases may be heard as a class action in Denmark.

In order for a court to approve a claim to be heard as a class action, the following main requirements must be satisfied:

- The court has jurisdiction for one of the claims in question;
- Denmark has jurisdiction for all the claims in question;
- The claims have identical or substantially similar factual and legal bases;
- The claims are most appropriately dealt with by way of a class action;
- The group members can be identified and notified of the proceedings appropriately; and
- It is possible to designate a class representative, which will be designated by the court.

A class action is initiated by way of filing a writ of summons. In addition to the general requirements for the contents of a writ of summons, the writ must also describe the class in question, information about how the group members can be identified and notified of the proceedings and a suggestion of a class representative.

The court then frames the class action and determines the model for and deadline for group members' participation. A class action lawsuit is usually an opt-in lawsuit, meaning that it only includes potential class members who have joined the class action by opting in. This applies unless the court determines that the class action should instead include the class members who have not opted out of the class action.

In both models, the court establishes a deadline for class members to opt in or out of the class action. The court may, in exceptional cases, allow opt ins or outs after the expiration of the deadline and even until the commencement of the trial. However, the exception provision is applied restrictively and only if there are specific justifications for it.

The legal parties in the class action are considered to be the class representative and the counterparty. However, the court's rulings also legally bind the group members.

A judgment in a class action can be appealed both individually and collectively. However, a collective appeal will take precedence over an individual appeal. The class representative can appeal collectively, while class members can appeal individually.

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Czech Republic

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Overview of court system

The Czech Republic is a civil law jurisdiction. Unlike in common law systems, Czech civil courts interpret the law using legislation and regulations. Judicial precedent is not a formal source of law.

The civil justice system is organized into:

- 86 District Courts;
- eight Regional Courts;
- two High Courts; and
- the Supreme Court.

District and Regional Courts act as courts of first instance. The Regional and High Courts act as courts of second instance (i.e., courts of appeal). The Supreme Court is the highest judicial body of the civil justice system and decides extraordinary appeals from decisions of the courts of second instance.

Most civil court cases are decided at first instance by single judges. Three judge senates hear appeal cases and higher, and in the Supreme Court, a grand senate of at least nine judges may decide.

Civil proceedings may only be conducted in the Czech language.

All civil courts are internally organised by the judicial departments. Each calendar year, the president of the court issues a work schedule, which informs the agenda for each judicial division. The division of the civil courts into judicial divisions and the organisation of work schedules is intended, among other things, to ensure specialisation in judicial decision-making.

Civil procedure in the Czech Republic consists of mainly two stages, with the possibility of extraordinary review by the Supreme Court. The vast majority of cases begin at the District Court level. The remaining cases – which include specific matters such as intellectual property and corporate disputes - start at the Regional Court level. A decision of the court of first instance may be appealed on legal or factual grounds. A decision of a court of appeal may be challenged on its legal grounds (an extraordinary appeal). By deciding on extraordinary appeals, the Supreme Court unifies Czech case law.

The most important decisions and opinions of higher courts are published by the Supreme Court in the Collection of Judicial Decisions and Opinions. These and other decisions of higher courts are given a “quasi-precedential character”. This means that although the courts are not bound by these decisions, there is a presumption that they will follow the higher courts' interpretation of the law.

A civil case may reach the Constitutional Court in some cases. The Constitutional Court is not part of the system of general civil courts. Its task is to protect constitutionality, fundamental rights and freedoms arising from the Constitution, the Charter of Fundamental Rights and Freedoms and other constitutional laws of the Czech Republic, and to guarantee the constitutional character of the exercise of state power. The Constitutional Court can therefore only intervene in a civil case if the general civil courts have not acted in a constitutionally compliant manner. In practice, the most common reason for bringing a case to the Constitutional Court is a violation of the right to a fair trial.

Limitation

The limitation periods in Czech law are divided into two categories: the subjective limitation period and the objective limitation period. The subjective limitation period for civil claims is three years and the time it begins to run depends on the type of claim. The subjective limitation period can only run within the objective limitation period, which is ten years from when the claim matures. In other words, the subjective limitation period cannot exceed the end of the objective limitation period. There are specific statutory provisions relating to the limitation period for different types of claims.

There are no thresholds for accessing the courts to bring a civil case. However, an appeal against the decision of the court of first instance can only be filed if the value of the disputed claim exceeds CZK10,000. An extraordinary appeal against the decision of a court of appeal can only be lodged with the Supreme Court if the value of the disputed claim exceeds CZK50,000.

Procedural steps and timing

Civil litigation is initiated by the filing of a civil action (statement of claim). The civil action must be brought before the competent court. Failure to do so will result in the transfer of the case to the correct court.

Upon receipt of the civil action, the court shall serve it on the defendant and invite them to submit a statement of defence. This is followed by the first hearing, at which the "concentration of the proceedings" should normally take place or at least be decided. The concentration of the proceedings is the point in time at which, with certain exceptions, no new factual allegations or evidence may be introduced into the proceedings. At the first hearing, the court will also inform the parties of its preliminary views on the merits of the case and, if necessary, invite them to supplement their arguments and evidence. This may be followed by further court hearings at which evidence is taken. The proceedings at first instance are concluded with each party's final pleading, followed by the oral pronouncement of the judgment. A written copy of the judgment is subsequently served on the parties. The described process represents the ideal course of proceedings before the courts of first instance. In practice, however, courts often do not take a strict approach to the concentration of proceedings, pushing them far beyond the first hearing.

The length of the proceedings before the court of first instance depends on, amongst other things, the judge's workload, and the complexity of the case. For more complex cases, the average length of proceedings at first instance is 12 to 36 months.

Legal representation is only mandatory in proceedings before the Supreme Court and the Constitutional Court. Otherwise, parties can represent themselves.

Disclosure and discovery

Parties do not have to undertake "full" disclosure. Instead, the parties have the burden of identifying and securing evidence that supports their procedural claims and assertions.

If the documentary evidence is not available, the relevant party may request the court to order the other party or a third party to produce such documents. The requesting party should make clear that such documents are needed as evidence in the proceedings and must narrowly define the documents requested. The request for document production shall be without prejudice to the obligation of confidentiality of classified information and any other obligation of confidentiality imposed by law or recognised by the state. A party's breach of the obligation to produce documents does not reverse the burden of proof but may result in an assessment of the evidence against that party.

The draft Act on Collective Proceedings (class actions), which has not yet been adopted, provides an exception to this regime. According to this draft Act, the disclosure of documents will be possible under the terms that are described in detail in the below section titled "Class Action" of this guide.

Default judgment

The court may only issue a default judgment if all the following statutory conditions are met:

- the defendant was served with the statement of claim by the court;

- the defendant was served with the summons to the hearing at least ten days before the date of the hearing;
- the defendant was informed of the possibility of issuing a default judgment;
- the defendant failed to appear at the first hearing without apology;
- the claimant appeared at the first hearing and applied for a default judgment; and
- the factual allegations contained in the statement of claim make it possible to rule against the defendant – a default judgment cannot be granted if the statement of claim contains inaccuracies which prevent further proceedings and for which it should be dismissed or the proceedings discontinued or if the claim is manifestly unfounded.

Furthermore, a default judgment is inadmissible if such a judgment has the effect of creating, modifying or dissolving a legal relationship between the parties.

The defendant may appeal against the default judgment within 15 days, such period commencing on the date of delivery of the written judgment. However, the appeal must be based on the grounds that the conditions for issuing the default judgment were not fulfilled. An appeal on the merits is not possible.

Appeals

The appeal must be lodged within 15 days from service of the decision of the court of first instance. Within that time limit, the courts accept in practice a simplified form of appeal, which is subsequently (usually within a further 15 to 30 days) completed in an extended and detailed form.

An appeal suspends the effect of the appealed judgment.

Appeals can be based on both factual and legal grounds. On questions of law, it is possible to challenge both the substantive law assessment of the court of first instance and the incorrect application of procedural rules. In other words, by filing an appeal it is possible to obtain a complete review of the case in all aspects. This is different to an extraordinary appeal, which can only be based on an incorrect legal assessment in the original matter.

The appeal proceedings are not accessible to minor monetary claims which do not exceed the value of CZK10,000.

The duration of the appeal procedure is usually six to 12 months.

Interim relief proceedings

It is possible to apply for an interim measure before the initiation of or during the civil court proceedings. The statutory purpose of an interim measure is either to provisionally regulate the relations between the parties if necessary, or to protect the enforcement of a future judgment.

In practice, interim measures are most often used to freeze assets. They can also be used to order certain conduct or, conversely, to prohibit certain conduct (for example, prohibiting the set-off of claims, convening general meetings or acting for the company in certain matters). The freezing of assets may concern any property that Czech law recognizes as an object of legal relations (real estate, movable property, securities, shares in companies, rights and claims, etc.).

The application for an interim measure shall be lodged with the same court which has jurisdiction on the merits. The court shall decide on the application without delay. If there is no risk of delay, the court may decide up to seven days after the application has been made. The decision on the interim measure shall be made without a hearing and on an *ex parte* basis.

In the application for an interim measure, the claimant must certify that he or she has a claim on the merits. Certification means that it is not necessary to prove the claim, but it is sufficient to evidence its existence and legitimacy in some basic manner. The application must also demonstrate that the relevant interim measure is necessary to provisionally regulate the relations between the parties or that there is concern that the enforcement of the (future) judgment would be jeopardised. Finally, the application should include an explanation that the interim measure will be proportionate.

Together with the application, it is mandatory to lodge a security deposit for compensation for potential damage caused by the interim measure. The amount of the security deposit is CZK10,000 (civil matters), CZK50,000 (commercial matters) or more if the judge considers it appropriate under the given circumstances.

A decision on an interim measure shall be immediately enforceable by its promulgation and, if not promulgated, by its service. Violation of an interim measure may result in criminal liability. Interim measures are enforced in the same way as any other court decisions, for example, the freezing of assets is marked in public registers (or notified to the banks), and other obligations may be enforced by a court bailiff if not fulfilled. Generally, any legal acts conducted by an obliged entity contrary to an interim measure are deemed void.

An appeal against a decision on an interim measure is possible. The appeal procedure is identical to an appeal against a decision on merits. However, because the interim measure is immediately enforceable, the appeal does not suspend its effect. Due to the fact that the courts of appeal normally decide on interim measure appeals without a hearing, the appeal proceedings tend to be shorter in length (usually one to three months).

If the interim measure ordered has lapsed or has been revoked for any reason other than because the claim on the merits has been adjudicated or because the claimant's right has been satisfied, the claimant shall be liable for the damages caused by the interim measure. This is liability to any person to whom damage has been caused (i.e. not only to the defendant).

A special type of interim measure is the so-called “preservation of evidence”, which addresses situations where there is a concern that a particular piece of evidence will not be able to be produced in the future or may be produced but with major difficulties

Prejudgment attachments and freezing orders

Under Czech law, the statutory purpose of an interim measure is either to provisionally regulate the relations between the parties, if necessary, or to protect the enforcement of a future judgment.

In practice, interim measures are most often used to freeze assets. They can also be used to order certain conduct or, conversely, to prohibit certain conduct (for example, prohibiting the set-off of claims, convening general meetings or acting for the company in certain matters). The freezing of assets may concern any property that Czech law recognizes as an object of legal relations (real estate, movable property, securities, shares in companies, rights and claims, etc.).

As regards timing, it is possible to apply for an interim measure both before initiation of or during the civil court proceedings.

Costs

To initiate civil litigation, a party is obliged to pay a court fee. If the subject of the dispute is a monetary claim, the amount of the court fee is 5% of this monetary claim, with the rate being reduced to 1% on the amount exceeding CZK40,000,000 and no fee is charged on the amount exceeding CZK250,000,000. The law contains several exceptions to this basic rule for determining court fees for monetary claims. For non-monetary claims and demands, the court fee ranges from CZK1,000 to CZK25,000.

If an appeal is filed, a court fee is payable at the same rate as when the civil litigation was initiated.

An extraordinary appeal to the Supreme Court is subject to a court fee in the range from CZK4,000 to CZK28,000, depending on the type and amount of the claim.

The costs of legal representation are borne by each party during the civil proceedings. Other costs, such as the cost of expert reports, are also borne by the parties. However, if a party proposes the appointment of an expert through the court, the court shall order that party to pay an advance on costs in this respect.

At the end of the proceedings, the court shall order the unsuccessful party to reimburse the other party's costs according to the following rules and principles:

- if the successful party has paid court fees, the unsuccessful party must reimburse them;
- the unsuccessful party shall reimburse the successful party for the costs of legal representation determined in accordance with the so-called Tariff Decree. The Tarif Decree sets out that the amount of compensation depends on the value of the dispute and the number of procedural acts. In practice, the amount for reimbursement actually determined is usually lower than the actual costs; and
- if the successful party has incurred other legally recognized procedural costs, the unsuccessful party must reimburse them.

In the event of partial success, each party is entitled to reimbursement on a pro rata basis and the more successful party is then entitled to the difference between the two amounts.

Class actions

The draft Act on collective proceedings (the Collective Redress & Class Actions 2022), which aims to transpose the European Directive on representative actions for the protection of the collective interests of consumers, is currently in the legislative process and is expected to be adopted in 2023.

The draft Act upholds the relatively narrow concept of class actions and does not aim to introduce the equivalent of the US Class Action Lawsuits, which allow claims in different areas of law. Class actions are to be limited exclusively to disputes arising from legal relations between businesses and consumers.

Only registered non-profit organisations which, in accordance with their main purpose, have a legitimate interest in protecting the rights or legitimate interests at stake will be allowed to bring a class action.

From the perspective of consumers, the class action procedure itself is based on the opt-in principle, i.e. consumers will have to either actively register their claim in the collective proceedings or pursue their claims individually after the end of the collective proceedings. Consumers who register their claim in the proceedings will not have the status of a party or intervening party and will have very limited procedural rights. The rights they do have will consist primarily of the right to be heard or the right to inspect the court file.

The draft Act introduces the disclosure of documents. A party will be allowed to request that the court order the other party to disclose reasonably accessible evidence and other means by which the true state of the case can be ascertained. If a party refuses to disclose this, it will be presumed that such evidence proves facts against that party's case.

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Finland

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Overview of court system

Finnish courts operate under the civil law system. Codified statutes take precedence over case law, but case law is still commonly relied on before the courts and provides important guidance on the interpretation of the codified statutes.

Litigation is conducted either in Finnish or Swedish, as the two official languages in Finland. In the home region of the Sámi people, it is also possible to use the Sámi language before the court. If a party in a civil matter requires interpretation or translation services during the proceedings, they must arrange it themself and at their own expense unless the court, on considering the nature of the matter, orders otherwise. However, the court will ensure that the citizens of other Nordic countries receive any interpretation and translation assistance they require in proceedings.

Decisions of a District Court can be appealed to a Court of Appeal if leave for continued consideration is granted by the Court of Appeal. Decisions of the Court of Appeal can be appealed to the Supreme Court provided the Supreme Court grants leave to appeal. Lower courts are not legally bound by decisions of the higher courts in Finland, although the decisions of the Supreme Court have a strong and notable influence on the lower courts' decision-making. In Finland, there are 20 District Courts, five Courts of Appeal and the Supreme Court.

In addition, Finland has Administrative Courts which review decisions made by the authorities. Decisions of the Administrative Courts can be appealed to the Supreme Administrative Court which, in most cases, requires leave to appeal from the Supreme Administrative Court.

There are also certain specialist courts in Finland including:

- the Market Court (hearing, amongst other things, IP, competition and public procurement cases);
- the Labour Court;
- the Insurance Court; and
- the High Court of Impeachment.

Decisions of the Market Court and the Insurance Court can be appealed to the Supreme Court or the Supreme Administrative Court depending on the nature of the matter. Decisions of the Labour Court and the High Court of Impeachment are final and therefore non-appealable.

Limitation

In Finland, the general limitation period for initiating court proceedings in civil matters is three years, which may be interrupted by a notice to the other party. The limitation period begins to run from a certain due date (invoice, date of performance under a contract etc.), or when the claimant knew or should have known about the cause of the claim. Further, there is a parallel limitation period of ten years, which is irrespective of the knowledge of the claimant.

Procedural steps and timing

Ordinary civil law cases are initiated by filing a written application for a summons with the District Court registry. Following receipt of the application by the registry, the case becomes pending. To the extent possible, the application for a summons should indicate:

- the specified claim of the claimant;
- the circumstances on which the claim is based;
- claim for compensation of legal costs; and
- the evidence that the claimant intends to present.

If the matter is not in dispute and relates to a debt of a specified sum, the application for a summons only needs to include the circumstances on which the claim is based. In this situation, there is no need to identify or include the evidence in the application.

After receiving the application for a summons, the court will issue a summons which will need to be served on the defendant by post or by bailiff. The claimant can serve the summons on the defendant where: (i) the claimant asks to be entrusted with the service of a notice; and (ii) the court deems there to be good reason for the summons to be served by the claimant. There is no specific deadline to serve the summons on the defendant and the service process usually takes at least a few weeks. After service of the summons, the defendant is usually granted a period of 30 days to file their statement of defense, although this period can be extended at the defendant's request, for example to allow the defendant sufficient time to prepare the defense. Following the filing of the statement of defense, the court may request that the parties each provide the court with a written statement outlining the exact issues that are in dispute (i.e. the claimant will set out the issues it disputes from the statement of defense, and the defendant will set out the issues it disputes from the claimant's written statement). The submission of these written statements (if requested) completes the written phase of the proceedings.

The oral phase of the proceedings then begins with a preparatory hearing at which issues relating to the preparation of the hearing will be discussed, and after which an oral hearing will be scheduled. Timeframes vary greatly and depend on various factors, including the complexity of the case and the workload of the court. In general, in a straightforward civil law case, the time from filing the application for a summons until obtaining a judgment varies between 12 to 24 months, the average time in 2022 being approximately 15 months.

It is not mandatory to use an attorney or counsel in court proceedings, except in circumstances when a party applies for the annulment of a judgment or files a complaint on the basis of a serious procedural error in the Supreme Court. In the event that a party decides to use counsel, only an advocate (a member of the Bar), a public legal aid attorney or counsel who has obtained the license referred to in the Licensed Counsel Act (715/2011) are entitled to act as counsel. A layperson may act as counsel in non-contentious civil matters and in-house counsel may represent their employer.

Disclosure and discovery

In a civil law case, each party shall present the evidence it deems necessary in the case. A civil matter is initiated by a written application for a summons, in which the claimant should, as far as possible, indicate the evidence they intend to present in support of their action and what they intend to prove with each piece of evidence. It is also possible to present more evidence as the case moves forward. Parties and witnesses are generally not heard before the main hearing, but if it is necessary to hear a party or another person or to admit another account in order to clarify an issue on which an expert witness is to be heard, that may be done before the main hearing. Further, at a party's request, a witness or expert witness may be heard or a document or object presented or an inspection conducted in a District Court in a civil matter in which the proceedings are not yet pending, if the right of the applicant may depend on the admittance of the evidence or the conducting of an inspection.

The court may on its own initiative decide to obtain evidence in a civil matter that is not amenable to settlement. Also, regardless of the nature of the matter, the court has the right to obtain an expert opinion on its own initiative. In addition, the court may order a party or a non-party to bring an object or a document in its possession to court on the request of a party, provided that the object or document could be of evidential significance in the case. This procedure is not intended to facilitate fishing expeditions and so the requesting party must define the document or group of documents that the request covers carefully. After hearing the other party and/or the party the request is directed at, the court will decide whether to permit the request. Where the document requested includes, for example, commercially sensitive information of a company or other privileged information, the court may oblige a party to produce a redacted copy of the document.

Default judgment

Where a defendant fails to deliver its written statement of defense before the deadline set by the court, the relief sought by the claimant

will be awarded in a default judgment unless the relief in question is evidently unfounded.

Default judgments may also be awarded at the request of either party if the opposing party does not attend the hearing. However, a default judgment will not be awarded: (i) against the claimant where the claim is evidently well-founded; and (ii) against the defendant where the claim is evidently unfounded.

The party against whom the default judgment has been rendered does not have a right to appeal on the judgment but has a possibility to have the matter returned back to the court for processing. Application regarding this must be done within 30 days of the date on which the appealing party received verifiable notice of the default judgment.

Appeals

Judgments of the District Court may be appealed to a Court of Appeal. A party who wishes to appeal a judgment of a District Court must declare its intention to appeal the judgment within seven days of the judgment being handed down. The deadline for filing the actual appeal is 30 days from the date of the District Court judgment.

Leave for continued consideration is required in all civil law cases and the party filing the appeal shall indicate the grounds for the appeal. Leave shall be granted if:

1. there is reason to doubt the correctness of the result of the decision of the District Court;
2. it is not possible to assess the correctness of the result of the decision of the District Court without granting leave for continued consideration;
3. in view of the application of the law in other similar matters, it is important to grant leave for continued consideration in the matter; or
4. there are other serious grounds for granting leave.

However, leave for continued consideration will not be granted solely in order to reassess the evidence unless there are reasonable grounds to doubt the correctness of the result of the decision of the District Court on the basis of the circumstances presented in the appeal. In general, the starting point is that a case can be completely reconsidered – on its merits and facts – on appeal, but in practice it may be easier to get leave for continued consideration (or leave to appeal from the Supreme Court) if the requested reassessment focuses on merits.

The Court of Appeal will usually decide whether to grant leave for continued consideration within two to three months of the request for leave for continued consideration. Thereafter, provided that leave for continued consideration is granted, the Court of Appeal will usually resolve the appeal within approximately 12 months, with the average time in 2022 being approximately seven months.

Leave to appeal must be requested from the Supreme Court in order to appeal a Court of Appeal judgment. Leave to appeal will only be granted on certain limited grounds which relate to the uniformity of legal practice and severe, procedural or other, errors that have occurred in previous phases. The Supreme Court has set a high threshold for granting leave to appeal; for example, in 2022, the court received 1,684 applications for leave to appeal in 129 cases. The appellant has 60 days from the date of the Court of Appeal judgment to: (i) apply for leave to appeal; and (ii) file the appeal. The Supreme Court will decide whether to grant leave to appeal within approximately six months of the request for leave to appeal. Thereafter, provided that the leave to appeal is granted, the Supreme Court will usually resolve the appeal in 14 months.

Interim relief proceedings

All Finnish courts have the power to grant interim relief and it is not mandatory to use an attorney or counsel when applying for the interim relief. Interim relief measures are usually meant to secure the object of the dispute before the resolution of the proceedings, or to prevent the defendant from dissipating its assets. The application for interim relief may be sought before or during court proceedings.

Common interim relief applications in Finland include applications to attach property, shares and/or receivables of the defendant (for further details please see Prejudgment attachments and freezing orders); prohibit the defendant from acting in a certain manner; order the defendant (or allow the applicant) to do something; or order other measures necessary to secure the applicant's right. In intellectual property matters, the court may be requested to issue a prejudgment attachment order in order to secure evidence before filing the claim on the merits.

Obtaining an interim relief judgment can be a relatively quick procedure. Usually, applications for interim relief will be made on notice, and the opposing party has the right to be heard. However, in cases of urgency, or in order to prevent the subject matter of the claim from

being compromised, the application may be made ex parte. If the court considers that there are grounds to grant interim relief, namely: (i) the claimant has a prima facie right; and (ii) there is a risk of irreparable harm if the interim relief sought is not granted, the decision may be obtained in a few days. However, very urgent ex parte applications may be resolved by the court on an even shorter timeframe, including on the day of the application.

If the court grants the relief sought, the applicant can seek to enforce the relief order using the enforcement authorities. Before enforcement, a party seeking relief will, as a general rule, be obliged to provide security for any loss which the defendant may incur as a result of the relief.

The justification for the interim relief will be decided together with the court's decision on the merits. A party who has unnecessarily applied for interim relief is liable to compensate the opposing party for the damage caused by the measure and its enforcement, and to cover any expenses incurred in relation to it.

An interim relief order can usually be appealed separately. Such an appeal takes approximately two to three months to be resolved by the Upper Court. The appeal doesn't suspend the effect of the interim relief measure unless the court handling the appeal decides that it will do so.

Prejudgment attachments and freezing orders

All Finnish courts have the power to grant prejudgment attachments and freezing orders, which are precautionary measures that can be either interim or final. The application for any type of precautionary measure shall be delivered to the court where the proceedings of the main claim are pending or, where there are no court proceedings pending, the court of the defendant's domicile.

In practice, all kinds of property, shares and/or receivables belonging to an opposing party can be attached by the enforcement authorities up to an amount that secures the applicant's claim.

An applicant for precautionary measures must prove that:

- it is probable that they hold a debt or prior right to a property against the defendant; and
- there is a danger that the defendant will hide or destroy the property or otherwise endanger the payment of the debt if the measure is not granted.

In practice, the threshold for granting an injunctive measure or a freezing order is quite low.

As a general rule, an application will not be granted without giving the opposing party an opportunity to be heard (i.e. the applications will usually be made giving the defendant notice). However, to prevent the subject matter of the claim being compromised, the court may, on the request of the applicant, grant the relief sought, which shall remain in force until further notice. If the court determines that the requirements to grant the precautionary measures above have been met, the court may issue its decision within a few days of the application and without notice to the defendant. The decision will then be enforced by the enforcement authorities. In such cases, the defendant will be granted an opportunity to respond only after the decision on the interim relief has been made and enforced.

If no court proceedings are pending before granting the prejudgment attachment or freezing order, the applicant must bring a claim on the merits within one month of the relief order being issued by the court. Where proceedings are not initiated within the required period, or if the case is discontinued, the precautionary measure will be reversed. The court will later render its final decision on the relief based on the written statements of the parties and the evidence presented.

A party seeking relief will, as a general rule, be obliged to provide security for any loss that the defendant may incur as a result of the relief.

The expenses incurred on enforcement of the relief will initially be covered by the applicant. The question of who ultimately covers the expenses will be decided, at a party's request, as part of the final determination. A party who has unnecessarily resorted to a precautionary measure is liable to compensate the opposing party for the damage caused by the measure and its enforcement and to cover the expenses incurred in relation thereto.

The applicant will seek enforcement of the court's prejudgment attachment order from the enforcement authorities.

Costs

The costs of litigation can be divided into court fees and legal fees, the latter creating the most significant part of the costs. In a general civil law case, the court fee amounts to EUR530 in all court phases (EUR530 per court phase, i.e. a total of EUR1,590 iif the case proceeds to the Supreme Court). The unsuccessful party will usually be ordered to reimburse all reasonable legal costs (i.e. lawyer's fees and disbursements) of the winning party.

Where several claims have been made in the same case and some have been decided in favor of one party and others in favor of the other, the parties are, as a general rule, liable for their own legal costs. The court may modify this rule to reflect the parties' relative successes and failures in the case. It is important to note that there is a rule, based Supreme Court practice, pursuant to which a court will not award costs to a successful party if the relief generally obtained is no more favorable than an offer that has been made by its opponent in the settlement negotiations.

Class actions

It is possible to file a class action in civil cases between a consumer and a company provided that several persons have claims against the same defendant and the claims are based on the same or similar circumstances. Further, it is required that the hearing of a class action claim is conducted expediently in view of:

- the size of the class;
- the subject-matter of the claims; and
- the evidence offered.

Either the Consumer Ombudsman or a qualified entity defined in the Act on Designation of Organizations Promoting of the Collective Interests of Consumers as Qualified Entities (implementing the Representative Actions Directive) shall represent the class, acting as a claimant.

The class action system is based on an opt-in procedure. The consumer must therefore expressly indicate their wish to participate in a representative action for redress. The opt-in right should be exercised by a written and signed notice of willingness to participate in the class action within the time limit set by the court, which may also grant an extension to the time limit. Further, the claimant may, on special grounds, accept a person as a class member if the person has submitted a notice of their willingness to participate in the class action after the expiry of the time limit but before the supplemented application for summons has been submitted to the court.

A decision issued in a class action can be appealed collectively and individually, meaning that if the claimant does not request a review of the decision issued in a class action, a member of the relevant class has the right to request a review in respect of their claim within 14 days of the end of the appeal period or the respective counter-appeal period.

A class action can be filed in disputes concerning a defect in consumer goods and interpretation of the terms of contract, disputes concerning sales and marketing of investment products, financial services and insurance as well as disputes relating to transport, data privacy and electronic communications.

Despite the fact that the Act on Class Actions came into force in 2007, no class actions have so far been filed in Finland.

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France

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Overview of court system

France has a civil law legal system, based on codified laws. When deciding cases, judges must interpret the law. Lower courts are not bound by higher courts' decisions, although decisions of higher courts have a certain influence over the lower courts and are considered to be persuasive.

In France, the court system is divided into two major branches: a judicial branch and an administrative branch. First instance judicial courts are divided into courts of general jurisdiction (including criminal courts and civil courts) and specialized courts, such as the Labour Courts and the Commercial Courts.

The civil court system is composed by 165 Judicial Courts (*Tribunaux judiciaires*). These courts result from the merger, in 2020, of the District Courts (*Tribunaux d'Instance*) and High Courts (*Tribunaux de Grande Instance*). Since then, the Judicial Court has been the sole court of first instance in civil, criminal and commercial matters, with jurisdiction to hear disputes that have not been assigned to another court, regardless of the value of the claim. Some Judicial Courts specialize in complex cases or cases involving a larger number of parties.

Where the claim is for payment of a sum not exceeding EUR5,000, it is compulsory to attempt conciliation, mediation or a participatory procedure before going to court, or the claim will be inadmissible.

In some cities, there is a Local Court (*Tribunal de proximité*), whose jurisdiction is similar to those of the former District Court, i.e. civil cases involving less than EUR10,000.

France has two specialized courts, the Labour Courts (*Conseil des Prud'hommes*), which have jurisdiction in all litigation cases between employers and employees, and the Commercial Courts (Tribunal de commerce), which handle cases involving commercial transactions or litigation between merchants. The judges in both the Labour Courts and the Commercial Courts are non-professional judges who are elected members of their community.

There are 36 civil Courts of Appeal in France and one civil Supreme Court (*Cour de cassation*), which is the court of last instance.

In France, the court proceedings are conducted in French. However, the International Chamber of the Commercial Court of Paris allows the parties, subject to certain conditions, to use English during the proceedings, and to obtain a translation of the judgment in English.

Limitation

There is a five-year limitation period usually (but not systematically) starting from the day the claimant knew, or should have known, the facts giving rise to its claim. Five years is the general statutory limitation period for filing civil and commercial claims but different periods may apply depending on the cause of action.

Procedural steps and timing

In general, the court that has territorial jurisdiction to hear a civil claim is the court of the defendant's domicile. Exceptions to this rule may apply in certain contract or tort law matters.

Representation by an attorney is mandatory before the Judicial Court and Commercial Courts, except for claims under EUR10,000, undetermined claims or claims arising from the performance of an obligation not exceeding EUR10,000. Nor is representation necessary before the Local Courts or the Labour Courts.

In order to initiate proceedings, a claimant must serve a writ of summons on the defendant. A writ of summons needs to be delivered to the defendant by a bailiff within the relevant limitation period. The writ of summons must substantiate the claim and be supported by relevant exhibits. After the summons has been served, the court will usually schedule a procedural timetable for the exchange of pleadings between the parties. The number of exchanges depends on the complexity of the case but, on average, the parties exchange two rounds of submissions and the defendant normally files the last submission. Once each party has had an opportunity to present its arguments, the dates for the closing of the exchange of the pleadings and a trial hearing for oral arguments will be scheduled.

Based on our experience, the average duration of a case before the first instance courts (both civil and commercial) is around one year. However, for complex matters requiring three or more rounds of submissions from each party and/or giving rise to procedural issues (e.g. issues in respect of document production), a case may last between 18 and 24 months, and sometimes longer, in particular in matters where a technical judicial expert is appointed by the Court. The workload of the court may also impact the length of the proceedings.

Disclosure and discovery

In France, the parties are free to choose the evidence in support of their respective claims. Each party must substantiate its claims and satisfy its burden of proof. Evidence is usually given in written form, including by way of affidavit.

Despite the above, the French Code of Civil Procedure allows for pre-action disclosure when (pursuant to Article 145 of the French Code of Civil Procedure):

- there is a legitimate reason to preserve or to establish the evidence before any trial; and
- the resolution of the dispute depends on this evidence.

The collection of evidence in such circumstances will most likely be done via an *ex parte* court order appointing a bailiff to preserve or establish such evidence. Only the investigating measures provided by the French Code of Civil Procedure may be ordered by the judge, who must ensure that the measure is not intended to supplement a lack of evidence on the part of the plaintiff. A recourse against such *ex parte* orders can be made before the judge having ordered the investigation measures to allow an adversarial debate.

During the course of the proceedings, if a party wishes to force another party to produce certain evidence, it may request the court to order production of such evidence, provided it can demonstrate that the evidence is relevant to the case. This gives rise to a discussion between the parties that is separate from the merits. If a party refuses to comply with a court order for the production of evidence, the court is entitled to draw any conclusion it deems appropriate based on the circumstances.

Default judgment

Where a defendant does not appear in proceedings (ie does not answer to the summons itself or fails to bring forward an attorney to represent it, when representation by an attorney is mandatory), the court will issue a decision on the sole basis of the evidence presented by the claimant. The defendant is also informed, in the summons issued to him, to appear at the indicated hearing with an attorney.

A defendant facing a default judgment may file an opposition before the court which issued the default judgment within a month of the notification of the default judgment to the defendant, and within three months if the defendant resides abroad. This opposition from the defendant will result in the proceedings being reopened.

Appeals

As a matter of principle, first instance decisions can usually be appealed. Appeals against decisions of a first instance court are lodged before the Court of Appeal with territorial jurisdiction. This said, the latest trend has been to designate courts of appeal to handle certain types of disputes (insolvency, antitrust, etc). For certain type of cases (e.g. proceedings involving competition or stock-market authorities), all the appellate litigation is concentrated before the Paris Court of Appeal. Appeals must be lodged within a month of the notification of

the judgment, except if the appellant resides abroad (in which case the timeframe is extended for an additional two-month period). Appeals must be filed within fifteen days for non-contentious matters. Appeals are typically resolved within 12 to 24 months after the notice of appeal is filed.

Appeals before the French Supreme Court are only intended to assess whether there has been a breach of law, or legal or procedural principles or rules. Such appeals must be lodged within two months from the notification of the Court of Appeal's decision, except if the claimant resides abroad (in which case the timeframe is extended to a four-month period). The French Supreme Court does not conduct a full factual re-assessment of the case. Appeals before the French Supreme Court are typically resolved within 12 to 24 months after the notice of appeal is filed.

In most cases, the provisional enforcement (*exécution provisoire*) of the judgment applies. Apart from a few exceptions, appealing the judgment will not suspend the effect of the judgment.

Interim relief proceedings

The French Code of Civil Procedure provides for various kinds of expedited interim relief proceedings. Representation by an attorney is not mandatory in interim relief proceedings.

The interim relief judge (*juge des référés*) can order any precautionary, restorative or expert measures to stop an obvious unlawful disorder, prevent either immediate damage or irreparable loss and/or to safeguard the rights of the claimant. The interim relief judge can also order the payment of a debt when there are no serious grounds to challenge it, in which case it is an interim payment. Applications for interim relief may be sought before or pending a resolution of the merits.

Interim relief proceedings start with obtaining a date for the hearing with the interim relief judge (*juge des référés*). The hearing can take place at short notice, ranging from hours to a couple of months depending on the level of urgency. The judge must ensure that, based on the circumstances of the matter, the defendant has had sufficient time between the time of service of the summons and the hearing to prepare its defense. At the oral hearing, both parties can elaborate on their respective positions. The timeframe between the hearing and the order depends on the urgency of the matter.

To obtain interlocutory measures, applicants must demonstrate that:

- the relief sought must be granted as a matter of urgency; or
- there are no serious grounds to challenge the applicant's claim.

A party may appeal against an interim relief order within 15 days of the order. As a general rule, the interim order relief order is enforceable by law and the appeal does not suspend the effect of an interim relief measure.

Prejudgment attachments and freezing orders

A claim may be preceded by an interim attachment over a debtor's assets by way of an *ex parte* application to either the President of the Judicial Court or the President of the Commercial Court which has jurisdiction. Prejudgment attachments and freezing orders are types of interlocutory measures and can be sought before, during or pending final resolution on the merits.

Attachments may target any kind of asset, including immoveable and moveable assets, bank accounts, shares, etc. For the judge to order an interim attachment, two conditions must be met: (i) the debtor's obligation towards the creditor must appear to be founded; and (ii) the creditor must demonstrate that there are circumstances threatening the repayment of the debt (e.g. the debtor may dissipate its assets). In assessing the former, the judge evaluates whether the evidence prima facie supports the creditor’s cause of action. Where an attachment order is granted, the debtor may seek its withdrawal before the same judge in an adversarial trial.

The creditor who obtained the attachment order from the judge must attach the asset within three months of the date of the order. After this time, the order is no longer valid. The creditor must commence an action on the merits within a month of the date of the attachment. In the event that the claim is not brought within the stipulated term, or the claim is dismissed in the proceedings on the merits, the creditor is liable for any damages caused to the debtor by the attachment.

Costs

In theory, the successful party is entitled to ask the court to order the unsuccessful party to reimburse its legal costs (pursuant to Article

700 of the French Code of Civil Procedure). However, except in cases where a party proves to be of particularly bad faith, judges are reluctant to award costs on an indemnity basis and the reimbursement of legal fees rarely covers the lawyers' fees in full. In most cases, the court fees allocated will depend on the amount of the litigation at stake and will amount to EUR2,000 to EUR20,000, except for matters relating to intellectual property or arbitration awards/international matters, where the court fees to be expected are closer to the incurred fees.

Class actions

After decades of debates and several aborted bills, class actions were introduced in France in 2014. Initially, they were limited to claims in the consumer law area. France has since created class actions in four other areas: health products, data privacy, environment and discrimination.

Further, a law enacted at the end of 2016 implemented a general framework applicable to class actions. Under the general rules of 2016, class actions can only be brought by specifically authorized associations. Such associations must have been duly registered for at least five years and their statutory purpose must include the defense of the interests that have been harmed.

The proceedings are divided into two phases: (i) a phase to define the class of claimants and the defendant's liability; and (ii) a phase to determine the amount of compensation to be paid to the individuals who suffered from the targeted wrongdoing. In France, the process works on the basis of a specific opt-in system. This allows consumers to apply to join the group after the decision on the defendant's liability.

Further to the Collective Redress Directive (UE) 2020/1828, aimed at introducing in all European Member States a cross border class action system, France will take the opportunity of implementing the Directive to adapt its class action system. It is expected that the new law would increase the conditions to be fulfilled by the associations to be allowed to bring a class action, in order to make the class actions more efficient in France.

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Germany

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Overview of court system

Germany follows a civil law tradition, its jurisdiction consists of four types of judicial authorities:

- approximately 640 Local Courts (Amtsgerichte);
- approximately 640 Local Courts (Amtsgerichte);
- 115 District Courts (Landgerichte);· 24 Higher Regional Courts (Oberlandesgerichte); and
- the Federal Court of Justice (Bundesgerichtshof).

In proceedings before the District Courts which concern matters of trade and commerce, particularly inbusiness-to-business cases, the parties may request that the case be handled by a specialist chamber of commerce, with a panel comprising of one professional judge and two commercial lay judges.

Legal representatives must be admitted to the German bar before they can appear in the District Courts and Higher Regional Courts.

In all civil cases heard by the Federal Court of Justice, legal representatives must be specifically admitted to the bar at the Federal Court of Justice (*Rechtsanwalt beim Bundesgerichtshof*). Legal representatives at the Federal Court of Justice are only allowed to practice before the Federal Court of Justice or other higher courts - but not before any of the lower courts. The requirement for a legal representative specifically admitted to the bar at the Federal Court of Justice does not apply in criminal cases. Here, representation by any legal representative admitted to the bar in Germany is sufficient.

German language is the mandatory language of the courts. Typically, all judicial documents and oral hearings will be in German. However, some Regional Courts offer the possibility of conducting oral hearings in English.

The threshold for accessing the German courts to bring civil proceedings is generally low. Litigation risk is both predictable and quantifiable, as German law does not permit punitive damages or contingency fees. The Rule of Law Index 2022 published by the World Justice Project ranks Germany fourth in the civil justice category, which measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. German court proceedings are also characterized by their efficiency and the absence of undue influence.

Limitation

The standard limitation period for civil claims in Germany is three calendar years, beginning on January 1 following the earlier of either the moment when the claimant knew, or ought to have known:

- the circumstances giving rise to the claim; and
- the identity of the defendant.

Procedural steps and timing

Legal representation is mandatory in all courts apart from the Local Courts (*Amtsgerichte*). The court's jurisdiction may be based on several factors which are connected to the dispute but, generally, the court of the defendant's domicile is competent to hear the case.

German civil actions begin with the filing of the statement of claim at the competent court (section 253 German Code of Civil Procedure, ZPO). The statement must identify and substantiate the claim. The statement of claim is served on the defendant by the court *ex officio* after it is filed. Service on the defendant can take several weeks. An advance covering the first instance court fees is generally required before the court serves the complaint. After the defendant receives the statement of claim, the court will usually schedule a court hearing. Prior to the hearing, there is typically one further round of pleadings exchanged by the parties. The timing of the hearing depends on the court's workload.

On average a straightforward case before the District Court will take 13 months from serving the statement of claim until a judgment is issued. However, they can last much longer than 13 months, especially when the facts are disputed and must be established by the court.

Disclosure and discovery

German law does not recognize the common law principle of extensive pre-trial disclosure or discovery. The taking of evidence is administered by the court. German courts can only rely on five methods to gather evidence: visual inspection; hearing witnesses, experts and the parties; and the production of private or public deeds. The procedure for production of deeds is rarely used, as the conditions for such disclosure are relatively difficult to satisfy and the court can only order the production of a specific document (section 421, seqq., ZPO).

The court can order a party to provide specific disclosure at the request of the other party or of its own volition. A request by a party to produce a document shall:

- specify the document or record;
- set out the facts the document or record is intended to prove;
- specify, as comprehensively as possible, the contents of the document or record;
- elaborate the grounds on which it is being alleged that the opponent has possession of the document or record; and
- set out the substantive grounds on which the other party is obliged to produce the document or record.

Default judgment

If the defendant does not appear in court (or fails to put forward an attorney, or to file a statement of defence), the claimant will be awarded judgment in default unless the claim prima facie appears to be without any legal basis (sections 331 et seqq., ZPO). A defendant confronted with a default judgment has the option to object. The objection must be filed within two weeks of the default judgment being served on the defendant, which **reopens the case**.

Appeals

Generally, a civil action begins either in the Local Court (if the amount in dispute is EUR5,000 or less) or the District Court (if the amount in dispute is more than EUR5,000). In principle, the parties can file a first appeal against a judgment to the next highest court (*Berufung*). The appellate courts will decide upon the case on average 13 months after the date of the first judgment.

Furthermore, after receiving an appeal judgment, the parties can file a second appeal (Revision) to the Federal Court of Justice. The second appeal must either be permitted by the Higher Regional Court or permitted by the Federal Court of Justice following a complaint against non-permission. Such permission requires that the dispute is of fundamental significance, or that a decision of the Federal Court of Justice is required for the shaping of law through judicial decisions or the safeguarding of consistent case law.

Finally, the Federal Constitutional Court (*Bundesverfassungsgericht*) can hear complaints if constitutional rights have been violated and all ordinary legal remedies have been exhausted. Most of the constitutional complaints are resolved within 12 months of the appeal being filed.

Interim relief proceedings

In Germany, there are two types of interim relief, namely (i) freezing orders (Arrest) (section 916 ZPO seqq.) and (ii) preliminary injunctions (*Einstweilige Verfügung*) (section 935 ZPO seqq.). Further details of these are set out under the heading "Prejudgment attachments and freezing orders" below.

Freezing orders and preliminary injunctions can be issued within a short time period, i.e. a week. The opposing party can appeal against a freezing order or preliminary injunction, and such appellate proceedings will generally last for over a month before the appellate court will issue a decision. Legal representation in interim relief proceedings is mandatory in all courts apart from the Local Courts (*Amtsgerichte*).

Prejudgment attachments and freezing orders

A request to freeze assets or to issue a preliminary injunction must be filed in the court that is competent to hear the main claim. It is also possible for a request to freeze assets to be made to the local court of the district where the assets are located.

Freezing orders attach assets pre-judgment to secure the enforcement of monetary claims (or claims that could become monetary claims). Assets that can be attached generally include movable and immovable property of the debtor, including claims and shares of the debtor.

Preliminary injunctions secure the status quo for all non-monetary claims and can either be prohibitory (i.e. requiring a person to refrain from doing a specified act) or, in exceptional cases, mandatory (i.e. requiring a person to take certain actions).

To obtain a freezing order or a preliminary injunction the claimant must have an underlying claim (*Verfügungsanspruch*) and demonstrate the need for protection (*Verfügungsgrund*). In respect of the need for protection, the applicant must show that a change of the status quo might frustrate the enforcement of their rights or might make such enforcement significantly more difficult. If these preconditions are satisfied, the applicant can obtain temporary relief within days, or even hours. The courts tend to respond very quickly, especially in cases of breaches of competition law or patent infringements.

Generally, the court will not hear the debtor as this might frustrate the purpose of the proceedings. However, once a freezing order or a preliminary injunction is made, the defendant may raise an objection to the decision by way of appeal. There is no deadline for filing this appeal. If the main action has not been started, the court can also order the party in whose favor a freezing order or a preliminary injunction has been granted to bring a claim within a deadline set by the court. If the claim is not filed within this deadline, the attachment can be lifted.

If the court decides that the freezing order or preliminary injunction was granted without merit, the party which obtained the order is under an obligation to compensate its opponent for any damages it has suffered as a result of:

- the freezing order or the preliminary injunction; or
- its opponent having provided security to:
  - avoid a freezing order or the preliminary injunction being granted; or
  - obtain the repeal of such order.

Costs

The costs of litigation in Germany can be divided into court fees and lawyer's fees. As German law adheres to the "loser pays" rule, the losing party is liable for the court fees and the other party's statutory legal fees. The court and lawyer's fees principally depend on the amount in dispute. For instance, if the amount in dispute is EUR10,000, the court fees for the first instance proceedings are EUR798 and for the first appeal are EUR1,064. The statutory legal fees in first instance for the own lawyer would amount to EUR1,850.45 and the fees for the opposing lawyer would also amount to EUR1,850.45. Where higher amounts are in dispute, the court fees become higher than the statutory lawyer's fees. For the purposes of calculating the recoverable costs, the value in dispute is capped at EUR30 million on which sum the first instance lawyer's fees would be capped at EUR300,168 for each part, and court fees at EUR362,163. In addition to these fees, disbursements for expert witnesses and ordinary witnesses are also recoverable.

Parties without sufficient funds may apply for a grant of legal aid. Parties may retain their lawyers on the basis of hourly rates. However, in the case of court proceedings, these fees will usually exceed the statutory fees described above.

Class actions

Germany currently provides for collective redress, mainly in the form of a declaratory relief action (*Musterfeststellungsklage*) brought by a Qualified Entity (an organization or public body representing consumers' interest). To file a declaratory relief action, at least 10 consumers must be affected by the allegations made in the lawsuit, and at least 50 consumers must opt in on the action. Once the declaratory relief proceedings are pending, no other action can be filed against the same defendant for the same cause of action.

However, there is an ongoing legislative process to implement a representative action in the form of a redress action awarding damages (*Abhilfeklage*), as well as an injunctive action awarding injunctions on a broader scale (*Unterlassungsklage*). The draft bill on representative actions builds on the declaratory relief action byexpanding its provisions, making a new law. This law is expected to come into force in autumn 2023 at the earliest , and will be introduced as a consequence of the binding EU Collective Redress Directive 2020/1828. The development and implementation of a representative redress action is an innovation in German law.

The representative redress action can only be brought by a Qualified Entity. To bring a redress action, a Qualified Entity must establish that more than 50 consumers "can potentially be affected" and the claims have to be essentially template-like. Affected consumers can pursue their rights by opting in on the action. However, there is no requirement of a minimum number of consumers to actually part take in the action. Once the redress action is pending, no other action can be filed against the same defendant for the same cause of action. Third party funding is permitted, if conflicts of interest between the funder and the consumers are prevented. However, this is impractical because the entire amount successfully claimed must be paid to the consumers, meaning that Qualified Entities are not able to offer customary remuneration to potential litigation funders in the form of a share of profits.

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Hong Kong, SAR

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Overview of court system

In 1997, the People's Republic of China (PRC) assumed sovereignty over Hong Kong and Hong Kong is now a Special Administrative Region of the PRC. Hong Kong has its own mini-constitution, called the Basic Law, which governs the laws applicable specifically to the region of Hong Kong. The Basic Law took effect on July 1, 1997 after the handover of Hong Kong from Britain to the PRC. All the laws previously in force in Hong Kong (including common law, statutes, etc) are maintained under the Basic Law except for any that contravene the Basic Law, and subject to any amendment by the Hong Kong Legislative Council. National laws of the PRC are not applied in Hong Kong except for those listed in Annex III of the Basic Law, which concern matters such as consular privileges and immunities.

Hong Kong operates under a common law legal system and its courts are separate from those in the PRC. In the event of conflict between statutory law and common law, the former will prevail. Commercial disputes exceeding HKD3 million (around USD385,000) are usually brought in the Court of First Instance of the High Court. Smaller claims are brought in the District Court or the Small Claims Tribunal. There are also specialized courts and tribunals, such as the Labour Tribunal and Lands Tribunal, which handle specific types of disputes. The highest appellate court in Hong Kong is the Court of Final Appeal, which hears appeals on both civil and criminal matters. In Hong Kong, the lower courts will be bound by the decisions and judgments of the higher courts.

Court proceedings may be conducted in either Chinese or English. Irrespective of the language used in the proceedings, witnesses may give evidence in the language of their choice and the court will accordingly arrange for interpretation facilities.

Limitation

In most commercial disputes, the limitation period for a claimant to commence a civil action is six years from the date when the cause of action occurred (for example, the date when the defendant committed the breach in a claim for breach of contract). However, in an action for breach of a contract created by deed, the limitation period is extended to 12 years from the date when the cause of action accrued. It is important to note that the Limitation Ordinance also prescribes shorter limitation periods for actions in respect of claims for personal injuries.

Procedural steps and timing

It is not mandatory for a party in any legal action in Hong Kong to have legal representation. Where the party is a corporate entity, a natural person (such as a director or officer of the entity) may be appointed with the permission of the court to act on its behalf in the legal action.

In general, the claimant would have to file a writ of summons with the relevant court to start a civil action in Hong Kong.

Once the writ of summons has been duly served on the defendant's legal representative, or by a bailiff on the defendant, the defendant must acknowledge service within 14 days (or, generally, 28 days if the defendant is served outside of Hong Kong with the court's permission) and state whether it intends to defend the action. The parties will then exchange pleadings (such as statements of claim, if not already served together with the writ of summons, defences, and replies) which define the parameters of the dispute and the specific issues which are to be proved by each party. If a statement of claim was not served together with the writ of summons by the claimant,

the claimant will need to file and serve it within 14 days of the defendant filing its acknowledgment of service and notice of intention to defend the action.

If the statement of claim was served together with the writ of summons by the claimant, the defendant has 28 days after the deadline for filing its acknowledgment of service to file and serve its defence. Otherwise, the defendant has 28 days after the relevant statement of claim has been served by the claimant to file and serve its defence. Thereafter, the claimant has 28 days to prepare its reply. In general, timelines prescribed by the rules of the court can be extended either by application to the court or through consent of the parties (without any application to the court).

Once the exchange of pleadings is complete, parties will undertake the disclosure process and go on to prepare their evidence (which includes witness statements and, if applicable, expert reports) for a final hearing of the dispute. Parties are generally obliged to attend court at regular intervals, during which orders are given to manage the conduct and timeframes of the case up until its final hearing.

The timeframe from the commencement of proceedings to handing down of judgment varies greatly depending on the complexity and case management style of an individual matter. Usually, relatively straightforward cases are ready to be set down for trial within two years from the commencement of proceedings. Complex cases, however, may take longer before they can be set down for trial.

Disclosure and discovery

In civil proceedings in Hong Kong, a party generally has a duty to disclose to the other party all documents relevant to the case that are within their custody, power or control, even if some of the documents are not favourable to their case. The disclosure process is usually undertaken after the pleadings have been filed as this is the time at which the points of dispute between the parties have crystallized. However, the court may also order disclosure prior to the commencement of proceedings where an applicant is able to satisfy the court that they need to obtain such disclosure in order to determine whether or not a cause of action exists against a potential defendant. Evidence is generally not obtained *ex parte*, but is obtained through discovery where parties may exchange and inspect the documents included in the list of documents. The primary test for evidence to be admissible in court is the test of relevance (ie evidence on any issue in the case or which directly/indirectly enables the party receiving discovery to advance their case or damage the case of their adversary will generally be admissible).

Each party to a civil action must disclose the relevant documents it possesses in the form of a list, known as the list of documents. Except for documents that are privileged, all other documents must be provided to the other party on request or made available for the other party's inspection. A party may refuse to disclose privileged documents to the other party. If there is a dispute as to whether a document is privileged, the court will make a final decision.

Prior to the commencement of proceedings, parties may make an application for pre-action discovery against prospective parties. However, pre-action discovery is limited to documents which are directly relevant (ie likely to be relied on in evidence by any parties or will support or adversely affect any party's case in the intended proceedings) and an order will only be made if the court considers it to be necessary for fair disposal of the cause or for saving costs.

There is a continuing obligation to give discovery after the commencement of proceedings and additional documents may be disclosed in a supplemental list of documents.

Default judgment

Default judgments can be applied for in civil proceedings in the District Court and the Court of First Instance where a defendant does not:

- give notice of intention to defend; or
- serve a defence, within a prescribed time limit.

A defendant may apply to set aside or vary a default judgment at any time if it was irregular in any respect or if the defendant can show that it has a meritorious defence to the claim and that there is a reasonable explanation for why the judgment was allowed to go by default in the first place. In considering whether to set aside a regular default judgment, the court will take into account all the circumstances and may only make a setting aside order with terms imposed on the defendant (for example, requiring the defendant to pay all or a part of the sum(s) being claimed by the claimant into court).

An application must be made to court for a default judgment by the party seeking such judgment after the expiration of the period fixed for service of the required pleadings from the other party. As a default judgment is administrative in nature, the court will not examine the

merits of the claim.

In order to grant judgment in default of a notice of intention to defend, the court must be satisfied on one of the following prerequisites: (i) the defendant acknowledged service of writ, (ii) there is an affidavit/affirmation filed by the plaintiff proving due service of writ, or (iii) the plaintiff produces the writ indorsed by the defendant's solicitor confirming acceptance of service.

Appeals

The Court of Appeal hears appeals from both the District Court and the Court of First Instance.

An appeal can be made on the grounds of challenges on the question of law, findings of fact and the exercise of discretion, but does not trigger a re-trial. The courts will consider the merits, the entire evidence and the trial. If new points or evidence intend to be raised for the first time during appeal, leave of the court (ie the court's permission) will be required for the appeal.

For civil cases in the District Court, a party who is not satisfied with the decision of a judge can apply to that judge for leave to appeal. The time limit for seeking leave to appeal is 28 days from the date of a final judgment, or 14 days from an interlocutory order or decision. If the judge refuses to grant permission to appeal, the party may apply for permission to appeal from the Court of Appeal within 14 days from the date of the judge11/11/2023 06:32:05s refusal.

For a case in the Court of First Instance, generally no leave is required for an appeal against a final judgment, but permission is still required for an appeal against an interlocutory order or decision of a judge of the Court of First Instance and the time limit for seeking leave is 14 days from the date of the interlocutory order or decision. Similar to an appeal from the District Court, if leave is refused by the Court of First Instance judge, the party may apply for permission to appeal from the Court of Appeal within 14 days from the date of the judge's refusal. The time limit for filing a notice of appeal against a final judgment of the Court of First Instance where no leave is required is 28 days from the date of the judgment.

Due to a number of factors, such as the availability of the parties and judges, it usually takes a minimum of six months before an appeal will be heard by the Court of Appeal. In terms of timeframe for resolving the appeal, there is no stipulated period and the timeframe for the Court of Appeal to issue a judgment varies depending on factors including the court's workload and the complexity of the case. This means that the Court of Appeal may issue a decision in less than six months or it may take over a year.

For civil appeals, leave to appeal from either the Court of Appeal or Court of Final Appeal is required. Permission to appeal will only be granted if the question or questions involved in the appeal is/are of great general or public importance, or, if taking into account all the relevant circumstances such as merits, the appeal ought otherwise to be submitted to the Court of Final Appeal. The time limit for seeking permission to appeal to the Court of Final Appeal is 28 days from the date of the Court of Appeal judgment. If the Court of Appeal refuses to grant leave, a further application for leave can be made to the Court of Final Appeal within 28 days from the date of the Court of Appeal's refusal. The Court of Final Appeal will usually hand down its written judgments within approximately one year after leave has been granted. That said, much depends on how busy the Court of Final Appeal is and also on the complexity of the case.

An appeal will not automatically operate to suspend the proceedings and the judgment will be deemed valid unless and until it is reversed. If the parties intend to suspend the effect of the appealed judgment, they may apply for a stay of execution of judgment pending the appeal.

Interim relief proceedings

The courts have wide powers and discretion to grant interim relief to parties in the proceedings. As in ordinary proceedings, legal representation in interim relief proceedings is not mandatory. The most common interim relief applications by far are for interlocutory injunctions to restrain the commission of any particular act by the respondent until trial or a further order of the court discharging the injunction in question.

An interlocutory injunction may be made on an urgent *ex parte* basis immediately prior to the formal commencement of the legal action.

In brief, an application for interlocutory injunction may be made to restrain the commission of an allegedly wrongful act by the respondent when:

- there is a serious issue to be tried (ie the claim has some expectation of success and is not a merely fanciful one);
- monetary compensation given at trial for the allegedly wrongful act would not be an adequate remedy for the applicant;

- the applicant is able to compensate the respondent and other affected parties for losses and damage arising from the granting of the injunctive relief if ordered by the court to do so subsequently; and
- the balance of convenience favours the granting of the injunction. In deciding where the balance of convenience lies, the court will take into account all relevant circumstances of the case.

In appropriate circumstances, an application for interlocutory injunction may be made on an urgent *ex parte* basis (ie without giving notice to any of the other parties in the action) at the same time or immediately prior to the formal commencement of legal action. Such *ex parte* hearings are heard by the court as soon as possible, usually on the same day the application papers are filed with the court. If a party applies for an interlocutory injunction before an action is commenced, the injunction applied for will be granted by the court with a condition requiring the party to issue a writ of summons immediately or as soon as reasonably practical.

An application for interlocutory injunction is usually supported by the applicant's affidavit evidence. In an *ex parte* application, the applicant has a strict duty to make full and frank disclosure of all material facts (even those unhelpful to their case) to the court.

Other interim remedies available include but are not limited to the following:

- **Security for costs**: Where the claimant resides/is incorporated outside of Hong Kong, a party can make an application for the claimant to pay a specified sum into court to meet any order for legal costs made at the trial.
- **Interim payments**: The general purpose of an interim payment is to reduce monetary hardship or prejudice that the claimant may suffer leading up to the trial. Where the defendant has already admitted liability or it is clear that, if the matter proceeds to trial, the claimant would obtain judgment for substantial compensation against the defendant, the court can require the defendant to make an advance payment to the claimant.
- **Anton Piller orders**: In order to prevent a defendant from destroying important documents/information, the court can grant an order which permits the claimant's representative to enter the defendant'exs premises to search for and seize certain documents which are relevant to the case.
- **Appointment of receivers**: A party in a dispute over the validity of the board of directors' appointments of a company and/or the ownership of the controlling stake in a company may apply for the appointment of receivers to the company to take over control of the management until determination of the dispute by the court. The court may appoint receivers to the company if it is just and convenient to do so having regard to all the relevant circumstances.

It is rare for interim injunctive reliefs to be appealed. Normally, if the aggrieved party disagrees with the interim injunctive relief granted by the judge, it will make an application to have it discharged. For interim injunctive relief obtained by the applicant on an *ex parte* basis, an aggrieved party may make a discharge application at the return day hearing. The return day hearing is typically held within a week of the hearing at which such interim injunctive relief was granted by the court and its purpose is to provide an opportunity for the parties affected by the interim injunctive relief to make submissions to the court and for the court to decide whether the interim injunction should continue.

If no discharge application is made at the return day hearing or if there is no return day hearing because the application for interim injunctive relieve was not made on an *ex parte* basis, an aggrieved party may make an application to discharge the interim injunctive relief at any time. Such application will normally be heard by the court within three to six months and the court usually decides on the application within two to three months of the conclusion of the hearing.

Appeals against interim remedies other than injunctive relief are usually heard by the court within three to six months, and decided within three to six months. Timeframes for the handing down of appeal decisions may vary greatly and would be affected by factors such as how busy the court hearing the appeal is and the complexity of the case.

Prejudgment attachments and freezing orders

Hong Kong courts can grant an interim freezing order, known as a Mareva injunction, which restrains a party from disposing of or dissipating its assets pending final judgment. A Mareva injunction is a type of interim relief, but the requirements that claimants must satisfy in order to obtain one are slightly different from the requirements referred to in interim relief proceedings, as further explained below.

It is possible to apply for a Mareva inunction to freeze any valuable assets of the defendant such as money in bank accounts, real properties, or shares in companies. However, the Mareva injunction will only operate to restrain the defendant from diminishing the value of their assets to less than the amount (usually the amount claimed by the claimant) specified in the injunction order.

The initial application for a Mareva injunction can be made either to the Court of First Instance or the District Court and is usually heard on an *ex parte* basis. Like other types of interlocutory applications, if a party applies for a Mareva injunction before an action is commenced, the injunction applied for may be granted by the court with a condition requiring the party to issue a writ of summons immediately or as soon as reasonably practical.

Any orders given *ex parte* will generally operate only for a limited period of time until the matter can be brought to a hearing involving all parties (ie an *inter partes* hearing). The plaintiff will generally file and serve the *inter partes* summons as soon as practicable or in line with the timeline specified in the order granted by the court for the Mareva injunction. An applicant seeking a Mareva injunction on an *ex parte* basis must provide full and frank disclosure of all matters relevant to the case, and will normally be obliged to give an undertaking to pay compensation for any losses or damage suffered by the opposing party in the event that the applicant later fails to prove that they are entitled to such an injunction order.

To obtain a Mareva injunction, an applicant must show that:

- it has a good arguable case on a substantive claim (ie a higher threshold than an application for an interlocutory injunction to restrain the commission of any allegedly wrongful act) which has already been commenced or is about to be commenced against the other party;
- the other party has assets within the jurisdiction;
- there is a real risk that the counterparty will dissipate or dispose of its assets unless restrained by the court; and
- the balance of convenience lies in favour of granting the injunction.

The applicant will be required to give undertakings, ie an undertaking in damages to compensate the other party or a third party (ie bank) for any loss incurred as a result of the injunction if it is subsequently set aside or the applicant fails to demonstrate the necessity of the injunction. However, the applicant will not be required to give any security to the court as a condition. Once granted, the Mareva injunction will be enforceable immediately and all relevant parties with notice or knowledge of the said injunction must do whatever they reasonably can to preserve the assets covered.

If the claimant asserts a proprietary claim over an asset currently in the possession of the defendant, the claimant may also apply for what is known as a proprietary injunction to restrain the defendant from disposing of or taking any action to diminish the value of the asset in question until final judgment.

To obtain a proprietary injunction, the applicant must show that:

- there is a serious case to be tried as to whether the applicant is the rightful owner of the asset;
- something ought to be done for the security of the asset, and that monetary compensation given at trial would not be an adequate remedy for the applicant; and
- the balance of convenience lies in favour of granting an injunction.

Costs

Hong Kong courts have a wide discretion to award costs orders against a party in order to cover the opposing party's costs of litigation. The general rule is that the unsuccessful party will be liable to pay the legal costs of the successful party. Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect the litigants' relative success.

Costs orders are subject to a costs assessment process administered by the courts. It is unusual that a party will be able to recover all of its actual legal costs through this process. On a standard assessment, a successful party may recover approximately 60-70% of their actual costs. However, in certain circumstances, the courts may order the costs to be assessed on a more generous basis (such as on a common fund basis or indemnity basis) where the court is of the view that the successful party should recover a greater proportion of the costs it has incurred (such as when the opposing party has engaged in unreasonable conduct in the proceeding). If the parties cannot agree on the costs to be paid, the party which is awarded costs can proceed to have the costs assessed by the court (also known as taxation of costs).

In terms of fees payable to the courts, in general a claimant will only need to pay a nominal amount (approximately USD80 to USD130) in court fees to commence a civil action in Hong Kong. However, if the court is subsequently required by any party to undertake a taxation of costs, a taxing fee calculated on a sliding scale, generally at around 2-5% of the amount of legal costs claimed, will also be payable to the

court by the party requesting the taxation.

Class actions

A representative proceeding may be commenced by or against any one person as a representative of numerous persons who have the same interest in the proceeding. Although bearing similarities to a class action, the procedure for a representative proceeding is generally no different from that of an ordinary court proceeding. The parties may include a brief outline in their endorsement of claim to note that it is a representative proceeding. The usual practise is to include an annex in the writ of summons to provide the list of individuals being represented. In line with other court proceedings, there is no specific timeline to commence the proceedings. The timeframe may vary significantly subject to the complexity and case management style of the specific matter.

A judgment in representative proceedings is enforceable against parties to the proceedings. If a party seeks to enforce the judgment against a person who is not an actual party to the proceedings but who is a member being represented, leave from the court is required. As a represented person is not considered to be a party to the proceedings, they are unable to appeal the judgment individually and the judgment will be appealed by the representative.

Other than the representative proceedings as described above, Hong Kong does not have any mechanisms available for collective redress or class action. In 2009, the Law Reform Commission issued a report which recommended a new mechanism for class actions. The Department of Justice established a cross-sector working group in 2012, and the working group has been holding regular meetings to study the proposals in the report in detail and to consider ways to take the matter forward. However, it has yet to publish any findings or recommendations so far.

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Hungary

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Overview of court system

Hungary follows a civil law tradition, where codified statutes take precedence over judicial decisions. Disputes are resolved by a centralized four-level court system:

- 113 District Courts operate as first instance courts;
- 20 General Courts operate as first instance courts in some special cases and appellate courts in others;
- Five Courts of Appeal operate as exclusively appellate courts; and
- The Curia operates as the ultimate supreme court in Hungary.

Even though the Constitutional Court cannot be regarded as part of the Hungarian court system in a traditional sense, it has one important competence in litigation matters: a party may challenge a decision before the Constitutional Court if all available judicial remedies have been exhausted and the decision is based on a law that is incompatible with the Fundamental Law of Hungary, or if the judgment itself is unconstitutional.

In 2020, a limited precedent system was introduced into Hungarian jurisprudence, such that lower courts may not deviate from a decision of the Curia published after January 1, 2012 (precedents) unless they provide a written justification as to why their interpretation of the law differs from the relevant precedent. Whether a departure from a precedent is justified or not will ultimately be decided by a special grand chamber of the Curia in a remedy called the *uniformity complaint procedure*.

The official language of the proceedings is Hungarian, which means that court submissions and court decisions must both be delivered in Hungarian unless EU or international law provides otherwise. At oral hearings, all parties are entitled to use their mother tongue, regional or minority language. In practice this means that oral statements or testimonies in a foreign language are taken with the help of an assigned interpreter, where appropriate.

Limitation

The time limit within which claims may be submitted is a matter of substantive law. In most cases (e.g. breach of contract or damage claims), the limitation period is five years and the period starts to run when a claim arose i.e. the completion date of a contract or the date when the damage occurs. However, in some cases this period is considerably shorter (e.g. 30 days for administrative review proceedings).

Procedural steps and timing

Legal representation is mandatory before the General Courts, Courts of Appeal, and the Curia. In particular, when the General Courts have first instance jurisdiction, the statement of claim must be submitted by an attorney.

The new Code of Civil Procedure, which came into force on January 1, 2018, introduced a two-phase procedure in civil and commercial cases. First, there is a preparatory phase, followed by a phase on the taking of evidence.

In the preparatory phase, the statement of claim is submitted to the competent court by the claimant. The court then examines the statement of claim within 30 days. Provided the statement of claim satisfies the formal requirements and does not require clarification, the court then serves it on the defendant. Following service, the defendant has 45 days to submit a written defense. If the court deems it necessary, the parties may exchange a further round of briefs.

A preparatory hearing may be held at the request of one of the parties, or if the court deems it necessary. The purpose of the preparatory phase is to define the scope of the dispute, and the facts and the evidence proposed by the parties. No taking of evidence or decisions on the merits occur during this phase. Throughout the litigation, the court informs the parties of their procedural rights and obligations. The court is now also obliged to provide material guidance to the parties to contribute to the efficient conduct of the proceedings, for example, by notifying a party if there is a contradiction in its statements, or if the court interprets the law differently to that party.

The preparatory phase is closed by an order of the court. After this order has been issued, parties are not generally permitted to change their claims, arguments, facts or evidence.

The second phase relates to the taking of evidence. Hungarian law follows a free system of evidence, which means that the parties may freely submit any type of evidence. Parties may also invite the court to summon witnesses, retain an expert or consider an expert opinion. Expert opinions may be given by a private judicial expert appointed by one of the parties, or by a court-appointed judicial expert. In the former case, the expert must still be impartial and independent, and is also obliged to answer the questions and consider the statements of the other party. There is no difference in evidential value between expert opinions made by private and court-appointed experts.

The court will render its final judgment at the end of the evidence phase and may schedule as many hearings as it deems necessary during that phase. In most cases, between one and four months will elapse between each hearing. On average, cases take between eight and 25 months in the first instance. However, complex cases which require extensive expert evidence may last even longer.

Disclosure and discovery

In principle, each party is responsible for obtaining and disclosing the documents upon which it intends to rely. US-style discovery of documents is not recognized under Hungarian law.

In exceptional cases, an application for the preliminary taking of evidence may be filed by a party prior to or during the proceedings. Preliminary taking of evidence may be warranted if it is likely that the taking of evidence would not be successful, or would be considerably more difficult or time-consuming at a later stage of the proceedings, for example where a witness is suffering from a serious illness or is leaving the country, or where physical evidence is directly at risk of destruction or transformation.

The court decides on the application for preliminary taking of evidence after having heard the counterparty, except where the counterparty is unknown or in urgent cases. If the court exceptionally grants the application ex parte it serves the order permitting the preliminary taking of evidence on the counterparty together with the application. Both parties have the right to appeal against such an order under the general procedural rules.

The court may order disclosure of specific documents by the other side or a third party, on the request of a party to the proceedings. The court will only order disclosure of documents that a party is obliged to disclose under applicable civil law rules (for example, an employer is obliged by the Labor Code to give the employee a copy of their employment contract). Civil law does not have specific rules setting out which documents must be disclosed, so this rule can be difficult to interpret in practice.

Requests for disclosure must be specific and confined to documents necessary to evidence a specific statement made by the disclosing party (e.g. it would be permissible to request disclosure of warehouse records for a specific day, in order to prove the date of delivery claimed by the claimant, but it would not be permissible to request disclosure of all the warehouse records on the grounds they might contain evidence relevant to the case).

Requests for disclosure may be rejected for reasons of confidentiality, legal privilege or because the documents are not relevant to the dispute.

If the party cannot obtain a relevant document because it is in the possession of an official authority, the court is obliged to obtain the document on the party's behalf.

Default judgment

If the defendant fails to submit its written defense within 45 days after receiving the statement of claim (and it has not obtained an

extension from the court allowing it to file its written defense at a later date), then the court will issue a default judgment ex officio. Note that a placeholder defense which lacks specific arguments, or a statement that generally disputes the claim but does not contain any specific substantial or procedural defense, will not qualify as a formal defense and so will not prevent default judgment being issued.

The default judgment will mirror the statement of claim i.e. the court will grant the remedies requested by the claimant. When issuing a default judgment, the court will not examine the merits, it will only consider whether there are any formal or procedural reasons to reject the claim.

The court serves the default judgment on the defendant, who then has 15 days to object. During this period, the default judgment will be suspended, meaning that it will only become effective and binding if none of the parties object to it within this timeframe. If the defendant wishes to object to the default judgment, it must submit its written defense brief along with its objection, otherwise the objection will be invalid. If a valid objection is filed, the default judgment will not become effective and the case proceeds as normal.

Once a written defense has been submitted, a default judgment may no longer be issued. However, the parties remain obliged to appear in proceedings, and failure to do so is sanctioned as follows:

- where none of the parties appear at the preparatory hearing, the court will terminate the proceedings ex officio;
- where only one party appears at a preparatory hearing and that party does not request that the hearing goes ahead without the other party attending, the court will similarly terminate the proceedings ex officio;
- where a party fails to appear at any hearing (whether during the preparatory or substantive stage of proceedings), that party is deemed:
  - not to object to any statement made at the hearing by the party who was present; and
  - to have no wish to make any further statements or motions at that point.
    (NB. This is one of the provisions in the new Code of Civil Procedure, which is hard to interpret in practice. An extreme interpretation of the rule would be that, in the absence of the other party, the court would have to accept any statement made by the party which is present, no matter how absurd that statement is. It is also unclear from the new code whether the party that did not attend the hearing is deemed not to contest the statements at the hearing, or not to contest them at all.)

Appeals

Decisions (orders of judgments) of the first instance court become final and non-appealable if the parties do not appeal within the required timeframe. Generally, appeals must be brought within 15 days of the decision being communicated to the parties. Late appeals or appeals that lack the minimum content elements, such as a specific relief sought or a legal provision which is alleged to have been breached by the first instance decision, are refused by the Court of Appeal. In that event, the Court of Appeal will first set an extra time limit within which the appellant may remedy the deficiencies of its appeal.

Appeals are typically resolved within six to 18 months after the notice of appeal of the first instance judgment is filed.

Second instance judgments are not subject to appeal other than by extraordinary revision.

In addition to the traditional appeal, there are extraordinary remedies, such as motion for retrial and extraordinary revision by the Curia.

A motion for retrial may be filed with the first instance court against a final and binding judgment, where new facts or circumstances are discovered after the judgment. A party to the original proceedings may initiate a retrial only if the newly discovered facts or circumstances would have been to the party's benefit had they been considered originally. A retrial may be requested within six months of the date on which the judgment became final or the date on which the new circumstances become known to the party, whichever occurs later. In any event, a retrial may not be requested once five years have elapsed from the judgment becoming final.

An extraordinary revision is a special appeal against a final and non-appealable second instance judgment, filed with the Curia. This review may be requested within 60 days of service of the second instance judgment. Though such appeals are described as extraordinary, it is not uncommon for parties to turn to the Curia. The Curia's review has a narrower scope than an appeal, as the Curia will only consider legal issues and will not re-examine the underlying facts and circumstances of the case.

Certain types of cases are generally exempt from referral to the Curia, unless (exceptionally) the Curia deems that the importance of the legal question in issue makes such referral necessary. These cases include: claims with a value of less than HUF5 million (approximately EUR15,000); decisions concerning child custody, and cases concerning joint ownership of condominiums.

Together with the limited precedent system, the uniformity complaint procedure has been introduced as an extraordinary remedy. A uniformity complaint can be filed on the basis of an alleged departure from a precedent when all available judicial remedies have been exhausted and the Curia has not remedied such departure in the proceedings. Under the current rules, uniformity complaints are decided by a Grand Chamber of the Curia consisting of 40 judges, or by sub chambers consisting of 20 judges, both chaired by the President or the Vice-president of the Curia.

The purpose of a uniformity complaint procedure is to establish whether the lower courts, or the Curia itself, have deviated from a precedent in interpreting the law and, if so, whether that departure is justified. If the deviation is found to be unjustified, the court decision in question is vacated. Very few uniformity complaints have been successful in the past three years. Among the most common reasons for dismissal were formal deficiencies (e.g. lack of proper power of attorney or a statement of reasons for the deviation) and lack of comparability between the precedent and the underlying case.

Interim relief proceedings

Interim relief is essentially a measure ordered by the court temporarily granting (i) the relief sought by the claimant in its statement of claim, or (ii) a measure aimed at avoiding further damage or preserving the status quo. The exact content of the relief is always determined by the underlying substantive law to be applied to the present dispute. Hungarian courts may provide a wide range of interim relief on a party's or prospective party's application. Interim relief applications are common in intellectual property disputes (e.g. applications to temporarily restrain the defendant from using a trademark), and in commercial disputes (e.g. applications to temporarily suspend a payment obligation, when the dispute concerns the validity of that obligation).

Parties or prospective parties can apply for interim relief before and after filing the statement of claim. From a procedural point of view, interim relief may be granted if:

- it is deemed necessary to prevent any imminent threat of damage to the requesting party, or preserve the status quo of the subject of the dispute, or with a view to providing special protection of certain rights; and
- if the advantages of granting the relief sought outweigh the disadvantage that may be suffered by the granting of the relief.

Additionally, the party or prospective party seeking interim relief is only required to prove that the underlying facts are probable. Evidence is not required at this stage. The court may also order the requesting party to provide some security before granting the interim relief.

The court decides on the interim relief request in an expedited procedure, in which the court has to take action within eight days following the receipt of the application. Relief is granted by way of a court order, which is immediately executable upon its communication. This also means that an appeal against the respective order has no suspensory effect on the execution of the interim relief.

In Hungary, interim relief is not an ex parte procedure; the court consults both parties before granting the relief, unless the case is extraordinary. Since the interim relief procedure is part of the litigation and not a separate procedure, the general rules of mandatory legal representation apply here as well (i.e. legal representation is not mandatory before the District Court and before the General Court on appeal, but in all other cases it is). The period for which the interim relief is ordered is indefinite, but it ends when the first instance judgment becomes final, at the latest. The court may, on request, withdraw or modify the relief if the underlying facts or circumstances change.

Exceptionally, interim relief may also be requested before filing the statement of claim, if, based on the information provided by the applicant, the court considers it likely that the interim relief must be ordered immediately, because by the time a claim is filed, it will be too late to protect the applicant's rights or interests. Where such early interim relief is ordered, the court sets a deadline no longer than 45 days, within which the statement of claim has to be filed. If the claim is not filed within this timeframe, the interim relief terminates. The request for this early interim relief must be filed in the court which will have jurisdiction for the substantive litigation. This means that if legal representation is mandatory before such a court for the litigation, then it is mandatory for filing this request too.

Prejudgment attachments and freezing orders

In Hungary, there are no prejudgment attachments or freezing orders available. If the parties wish to secure movable or unmovable property, they may seek to obtain: (i) a security measure; or (ii) register that there is a pending litigation with the land registry. These measures are not categories of interim relief. They can be distinguished from interim relief measures because: (i) the former are aimed at securing the future satisfaction of a claim, whereas an interim relief may also serve to prevent further damages, or preserve the status quo; and (ii) a security measure is ordered in a standalone court procedure, while interim relief measures may be ordered during or in connection with a litigation (including prior to filing a statement of claim).

Security measure

A security measure is an instrument similar to a prejudgment attachment or a freezing order under Hungarian law. A security measure may be requested in two types of cases:

- where the creditor's claim is based on a resolution or judgment which is not yet enforceable (e.g. because the period in which an appeal may be brought or the deadline for performance has not yet lapsed); or
- where there is ongoing litigation or arbitration on the same matter and both:
  - the amount; and
  - the date when the amount will be owed;
  - is evidenced by a public deed, or a private deed with full probative effect (private deeds with full probative effect are, inter alia, deeds where signatures are notarized or endorsed by two witnesses, and those duly executed by representatives of business associations).

In order to request a security measure, the creditor must also demonstrate that the enforcement of its claim post-judgment is at risk.

The purpose of a security measure is to secure the enforcement of claims that meet the above requirements. The security measure can secure a monetary claim, or the sequestration of specific objects. The measure is enforced by a bailiff.

In cases where the security measure is aimed at securing monetary claims, the bailiff visits the debtor at its domicile and requests the debtor to pay the amount specified in the court order immediately. If the debtor fails to do so, the bailiff seizes the debtor's property by making a report. The physical absence of the debtor does not prevent the bailiff from carrying out the attachment procedure. Any object or property can be attached, including movable and immovable assets, or shares. Wages can be garnisheed if the debtor has no other enforceable assets to cover the amount to be secured.

If the debtor is a company, the bailiff first instructs the company's bank to freeze the amount to be secured and if the balance of the account is less than the required amount, to do the same for future receipts. The bank then informs the bailiff of the amount for which it was able to freeze. The debtor's assets may be seized only up to the remaining amount of the claim.

General jurisdiction rules apply to the security measure, such that the request must generally be filed with the court of the debtor's residence. If there is ongoing litigation in relation to the same matter, the same court has jurisdiction over the security measure. However, as the security measure procedure may also be pursued to secure claims in relation to which judgment has already been given but are not yet enforceable, the security measure may not necessarily be followed by a decision on merits.

Creditors are generally not liable for any damages the security measure may cause to the debtor. In exceptional circumstances, for example, when a creditor has acted fraudulently or abused a debtor's rights, the creditor may be held liable, but this seldom happens.

Registration of litigation in case of property claims

A special kind of freezing order in Hungarian law is the registration of litigation with the land registry. This measure only applies in the case of immovable property. If the subject of the litigation is the ownership of immovable property, the claimant may ask the court to register the litigation on the land registry sheet of the property. Such a measure cannot be requested before filing a statement of claim. The court does not have to notify the defendant about such request and may order the registration of litigation prior to serving the statement of claim on the defendant.

Strictly speaking, this will not result in a freezing order, but after the registration of litigation takes place, all other rights and obligations will only be registered provisionally with the land registry pending the outcome of the litigation. So, for example, if someone sues for the ownership of a property, and the litigation is registered, the owner may still sell the property during the litigation. However, if the claimant wins, the ownership of the buyer will be removed from the land registry.

Claimants are generally not liable for any damages which the registration of litigation may cause to the defendant. In exceptional circumstances, for example, when a claimant has acted fraudulently or abused a defendant's rights, the court could in principle hold a claimant liable for such damages, but we are not aware of any decisions when such liability has been found.

Costs

When filing the statement of claim, the claimant must pay a court fee, which is a certain percentage of the claim's value, or a lump sum if the value cannot be determined. The court fee is capped at:

- HUF1.5 million (approximately EUR4,500) in the first instance proceedings;
- HUF2.5 million (approximately EUR8,000) in the second instance; and
- HUF4.5 million (approximately EUR14,000) in the Curia's extraordinary revision proceedings.

During the proceedings, further court fees may be incurred (e.g. fees of judicial experts, and translation costs) which must be advanced and deposited by the party in whose interest the costs are incurred. Moreover, during the litigation, the parties have to pay their own costs, which are included in the procedural costs.

The court decides on the procedural costs at the end of the proceedings on the basis of the parties' winning/losing ratio. In principle, the losing party bears all the procedural costs, including the costs advanced by the successful party during the course of the proceedings. Legal fees are usually awarded by applying a calculation which progressively follows the case value. In practice this means that, in high value cases, lawyers' fees cannot usually be recovered in full by the successful party.

In some cases, irrespective of the outcome of the proceedings, the court may grant some relief from the procedural costs. This may either be due to exceptional personal reasons or the nature of the subject of the proceedings. In these circumstances, the court might relieve a party from the requirement to advance and/or bear any procedural costs, alternatively from advancing and/or bearing court fees.

Class actions

There are three ways in which collective claims can be brought under Hungarian law:

- The closest instrument to the class action of common law jurisdictions is known in the Hungarian legal system as *associated litigation*.
  - This new instrument was introduced by the new Code of Civil Procedure in 2018 in limited types of cases; namely consumer, labor and environmental claims.
  - A class action may be filed by at least ten claimants. The claimants must enter into a contract setting out the terms of their class action, and nominating a representative claimant who appears before the court on behalf of all claimants. The claims, allegations, rights violated and underlying facts must be identical for all claimants. Multiple class actions are allowed on the same subject.
  - After a class action is filed, the court first decides whether the requirements of a class action are met. If the court decides the requirements are met, the class action can proceed and it will generally follow the same steps as in normal litigation, save that all procedural rights (including the right to appeal) will be exercised collectively through the representative claimant. Once the claim has been filed, it is only possible to join or leave the class action during the preparatory phase and only with the court's permission.
- The Civil Code allows public interest proceedings to be brought to declare standard contractual terms unfair.
  - Such proceedings may be initiated by the public prosecutor, the government, and certain consumer protection representatives against a company seeking to impose the unfair standard terms. The court may declare certain unfair standard contract terms between the company and its consumers null and void. The court's judgment is effective in respect of all consumers who have contracted under the same unfair term(s) with the company. The court may also require the company to publish a declaration of its unfair practice in one of the public newspapers.
  - Organizations representing businesses also have standing to bring public interest proceedings in limited circumstances, namely to challenge grossly unfair payment standard terms incorporated into business-to-business contracts.
- The third category is collective redress proceedings.
  - Different sectorial laws give confer on government agencies, authorities, the public prosecutor, or NGOs the right to launch collective redress proceedings if they encounter some sort of collective violation in their respective fields. The Central Bank, Competition Authority, Consumer Protection Authority, Public Utility and Energy Authority and Equal Treatment Authority, amongst others, have such rights. Collective redress proceedings can be launched either on behalf of aggrieved individuals, for example in consumer protection cases, or in the public interest, for example in environmental or animal welfare cases.
  - The applicable substantive law will determine what claimants may claim in these collective redress proceedings. For example, if the exact identity of the aggrieved consumers (i.e. the specific individuals who suffered harm) cannot be defined, the Consumer

Protection Authority or the Competition Authority may only request the court to declare that there has been a violation. However, when the specific individuals who suffered harm are defined, these authorities may also sue for damages on behalf of the aggrieved consumers.

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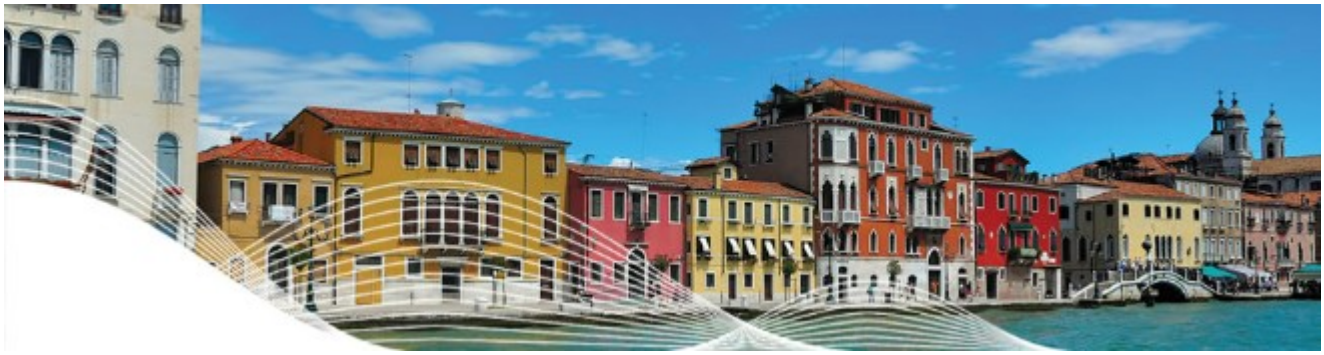

Italy

Last modified 31 May 2023

Overview of court system

Italy's legal system follows the civil law tradition, where codified statutes are of primary importance.

The Italian civil court system is organized into a three-tier structure:

- Courts of First Instance;
- Courts of Appeal; and
- the Supreme Court (Court of Cassation).

Proceedings before the courts are conducted exclusively in Italian. Codified laws prevail over case law; in Italy judgments have only argumentative value, not precedent value.

There are specialized courts for industrial property and corporate matters. Every Italian city has a Court of First Instance and there are 26 Courts of Appeal.

Rules on jurisdiction are set out in the Italian Code of Civil Procedure (Italian Code). These rules determine which Court of First instance a particular case should be filed in. The territorial jurisdiction of the Courts of Appeal depends on the location of the Court of First Instance that issued the decision to be appealed. The seat of the Court of Cassation is unique, as it is fixed in Rome.

On October 17, 2022, Law Decree No. 149 of October 10, 2022 was issued, in which the Italian government reformed the Italian Code to speed up ordinary proceedings, which were generally considered to take too long.

It is now expected that proceedings before the Court of First Instance should take a maximum of two years, while appeal proceedings should take a maximum of one year.

Limitation

As a general rule, contract claims are subject to a ten year limitation period, beginning on the date on which the rights under the contract could have been enforced. For tort claims, the limitation period is five years from the date when the event giving rise to the tort claim occurred.

Procedural steps and timing

Legal representation for civil proceedings is mandatory except for disputes:

- for which the *giudice di pace* is competent. The *giudice di pace* is a judge of first instance who is competent for disputes below a certain value (EUR10,000 or EUR25,000) depending on the subject matter of the dispute) and / or disputes concerning specific subject matters; and
- where the amount in dispute either (i) does not exceed EUR1,100; or (ii) exceeds EUR1,100 but in light of the nature and amount of the

dispute, the *giudice di pace* expressly authorizes a party not to be represented by an attorney.

Writ of summons

In Italy, civil proceedings start when the claimant serves a writ of summons, either through the use of a bailiff or, if the defendant has a certified e-mail address (PEC), by sending the writ via email.

In some proceedings, the claimant is required to file a petition before the Court which will be decided by the Judge who will issue a decree; the petition and decree are then served on the defendant.

The writ / petition will summon the defendant to appear at a hearing on the date indicated by the claimant in the writ. The writ must also contain the following information:

- details of the court before which the claim is filed;
- all the relevant information required to identify the claimant and the defendant;
- a description of the subject matter of the claim;
- an indication of statutory requirements to be fulfilled as a condition of admissibility of the writ, if required;
- a clear and specific description of the factual and legal grounds of the claim and the relative conclusions;
- an indication of the evidence on which the claimant intends to rely or request in the proceedings (for example, a party may request that witnesses are heard on specific topics or an expert is appointed by the court) and, in particular, an indication of the documents which the claimant exhibits with the writ of summons;
- the name of the lawyer(s) acting and the power of attorney; and
- an invitation to the defendant to file its statement of defense and to appear at the hearing, with the warning that, where the defendant intends to: (i) raise a counterclaim; (ii) join a third party to the proceedings; or (iii) raise objections based on procedural deficiencies or merit which the judge cannot raise *ex officio*, it must file its statement of defense at least 70 days before the date of the first hearing.

The first hearing

Between the date of the first hearing and the date of the service of the writ of summons on the defendant, there must be a period of at least 120 days if the place of service is in Italy, or 150 days if the place of service is abroad. When setting the date of the first hearing, the claimant must ensure it complies with these timeframes otherwise the court will declare the writ of summons null and void. Although the claimant schedules the first hearing by indicating the intended date in the writ of summons, judges may postpone the date of the hearing *ex officio* depending on their workload and / or calendar.

Parties to the dispute must attend the first hearing. The judge may also request or allow the summoning of a third party to the proceedings, scheduling a further hearing to allow this summons if necessary. The judge may also question the parties and use this hearing as an opportunity to explore the possibility of an amicable settlement between the parties.

Before the first hearing, the judge will verify certain preliminary procedural issues, such as the successful service of the writ of summons on all parties and the capacity of the claimant to bring the claim.

Before the first hearing, the parties are given three consecutive terms (a first term of 40 days before the date of the first hearing, a second term of 20 days and a final term of ten days before the hearing) to simultaneously: (i) file supplemental written submissions particularising or modifying the prayers for relief and the objections outlined in the writ of summons and / or in the statements of defense; and (ii) supplement the evidence requests they have made, respectively, in the writ of summons and / or the statement of defense.

Once these preliminary stages have been completed, various scenarios may follow:

- If the judge deems the dispute ready to be determined, the hearing for the submission of the parties' final prayers for relief is immediately scheduled;
- If the judge deems the dispute not to be complex, it may order an expedited procedure to be followed rather than the ordinary procedure. Alternatively, if the dispute involves disposable rights and the judge considers one party's arguments to be made out whereas the opposing party's are not, it may issue an order in favor of the first party. The order thus rendered is immediately executable but it is not covered by the *res iudicata* effect;

- Should the judge deem the dispute not ready to be determined, a hearing will be scheduled to decide whether the evidence requested by the parties will be admitted or refused. At the same time, the judge will schedule further hearings, and define the issues to be decided at each hearing. At these hearings, the judge will decide on these issues and then the evidence-taking phase begins.

The taking of evidence

Where the judge deems the dispute not ready to be determined, the judge sets the timing, place and method for the taking of evidence, taking account of the existing procedural schedule. For example, if witness testimony is admitted, the judge will set a hearing for the witness(es) to render their testimony. If the taking of evidence needs to take place outside the court's district, the judge will delegate that step to a judge in the relevant location unless, exceptionally, at the parties' joint request, the president of the tribunal confirms that the original judge shall travel for the taking of the evidence.

The judge taking the evidence decides (by issuing an order) all of the issues which arise during the evidence-taking phase. The taking of evidence is recorded in minutes, drafted under the judge's supervision.

Once the evidence-taking phase is concluded and the judge considers the evidence which has been collected is sufficient to support the case, it submits the case for decision.

The final hearing

The hearing for the parties to submit their final prayers for relief will usually take place within one year or, in some instances, two years after the decision of the judge that the dispute is ready to be determined or the conclusion of the evidence-taking phase. The parties are then granted 60 days from the date of the hearing to file their conclusive briefs, 30 days thereafter for written closing submissions and 15 days thereafter to file the reply briefs. The judge's decision is issued within 60 days of the parties filing their reply briefs. The decision is temporarily enforceable, notwithstanding any appeal.

If the matter is appealed, the appeal judge may stay, in whole or in part, the enforceability or execution of the judgment, with or without seeking a bond. However, the judge may only grant a stay upon receipt of a motion filed by one of the parties either with the main appeal or the incident appeal, i.e. when there are serious and well founded reasons to do so and there is a real possibility that one of the parties may become insolvent.

Debt collection

In addition to ordinary proceedings, there is a simplified judicial procedure aimed principally at commercial debt collection. Such debt collection is obtained through the issue of a payment injunction (*Decreto Ingiuntivo*) by the competent court. The procedure applies to debts which are:

- quantified in their amount;
- due and payable (*liquidi* and *esigibili*); and
- supported by written evidence.

As part of this simplified judicial procedure, the judge normally proceeds, without the knowledge of the alleged debtor, to a brief assessment of the documentation filed. Where the legal requirements referred to above are met, the judge will issue an order for payment which becomes enforceable if the debtor fails to oppose it within 40 days from service of a certified copy of the order where the debtor is situated in Italy, or 50 days where the debtor has its registered office elsewhere in the European Union, and 60 days in all other cases. If the debtor serves the creditor with opposition in the form of an ordinary writ of summons indicating that it will oppose the order, the proceedings will follow the ordinary procedural steps and timings referred to earlier in this section. Even where an opposition writ or summons is served, provisional enforcement of the judgment may be granted if certain legal requirements are met.

Disclosure and discovery

There is no obligation of discovery under Italian law.

This means that the parties are not obliged to share relevant documents unless an order to this effect is issued by a judge. Such orders can only be made when a party specifically requests a document to be disclosed and the judge deems such disclosure necessary. No such order can be issued by the court on its own initiative.

A party wishing to request the disclosure of specific documents must file the request within the three consecutive terms set by the judge to file supplemental written submissions and evidence requests (namely, the first term of 30 days from the date of the first hearing or any subsequent date that the judge deems appropriate, the second term of 30 days and the final term of 20 days). Each document request should:

- specifically identify the document(s) requested;
- prove that the party making the request has no access to the requested document(s) and that there are no alternative ways to get access to it; and
- explain why that document is relevant and material to the case.

The judge can permit the filing of all documents, even confidential documents between lawyers.

A party receiving a document request is not obliged to disclose the document requested. In practice, disclosure only occurs when the documents requested do not harm the disclosing party's case.

Default judgment

If the defendant does not file the statement of defense 70 days before the date set in the writ of summons or such date as the judge has specified, the court will verify whether the claim was properly served. If proper service can be established, the judge will declare the defendant's contumacy (i.e. the defendant's failure to appear to contest an action). Despite the defendant's contumacy and lack of participation in the proceedings, the claimant is still required to prove its case. A judge will therefore assess the merits of the claimant's claim and issue a judgment if the claimant discharges its burden of proof. The judgment will then be served on the defendant, who can appeal it according to the general rules governing appeals.

The judgment must be challenged within 30 days of notification or within six months of publication (if no notification was made).

Appeals

An appeal must be filed within six months from the date on which the judgment is published (i.e. filed at the registrar's office of the rendering judge) or, if a certified copy of the judgment is served at the request of a party, within 30 days from the date of service. Where a judgment is appealed, the case will be revisited by the Court of Appeal. The parties are not permitted to introduce new claims, and further evidence is either not admissible or is admissible only to a very limited extent.

The appeal may be declared inadmissible if it is manifestly unfounded.

An appeal does not suspend the effect of the judgment. However, the appealing party may request that the judgment is suspended on the grounds that it will create irreversible damage and the appeal is likely to be well founded.

During the appeal, the case is completely re-examined but no new documents may be filed.

The timeframe for the Court of Appeal to decide an appeal varies depending on the district. Usually, larger districts (such as Rome and Milan) take longer. On average, it takes the Court of Appeal no less than 36 months from the date on which the First Instance Court gave judgment.

A Court of Appeal decision can be challenged before the Supreme Court, but only on grounds of law (whether substantive or procedural). The timeframe for appealing a Court of Appeal decision is:

- six months from the date on which the appellate judgment is published (i.e. filed at the registrar's office of the rendering judge); or
- if a certified copy of the judgment is served at the request of a party, within 60 days of the date of service.

In principle, the Supreme Court does not review a decision on the facts.

The timeframe for the Supreme Court (Court of Cassation) to decide on appeals ranges from 36 to 48 months.

Interim relief proceedings

Italian law provides for, and clearly defines, different kinds of interim measures. They include:

- protective measures, which are sought pre-action, and are temporary in nature such that they need to be confirmed or revoked by the final judgment; and
- anticipatory measures, which remain effective even if they are not followed by an action on the merits.

Parties may seek interim relief measures both during the proceedings and prior to their commencement. Where a protective interim relief measure is granted before the commencement of the proceedings, the claimant must commence an action on the merits within the timeframe set by the judge, which shall not exceed 60 days from the adoption of the interim measure. Otherwise, the interim measure becomes ineffective.

An interim measure may be granted after a brief and concise evaluation of the case, which takes place during a hearing in which both parties are invited to participate. Generally, an interim measure will be granted where the claimant proves the presence of the following two conditions:

- the *fumus boni iuris*, that is a prima facie case of the right claimed; and
- the *periculum in mora*, that is a well founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

In some cases, the court may provisionally decide interim relief requests without holding any hearing and so without involving the defendant (i.e. ex parte). In these cases, the courts would then re-establish the necessary dialogue (and due process) with both parties in a second phase after the interim measure is rendered. In this second phase, a hearing will be scheduled within 15 days of the interim measure order being granted, and the claimant must serve the defendant with the request and order of appearance within eight days of the order. These timeframes are tripled in cases where service is required to be made abroad. Once the other party is involved and heard, the measure will be: (i) confirmed; (ii) modified; or (iii) revoked.

The duration of interim relief proceedings varies depending on the measure requested and on the specificities of each case. The timeframe can range from approximately one to 18 months. However, where the proceedings are ex parte, the judge may take just a couple of days to order the relief.

The order granted pursuant to an interim relief application can be appealed within 15 days from either (i) the date of the hearing at which the order was rendered, or (ii) when the order was communicated or served to the party, whichever is the earlier.

No other quick or informal ways to obtain an interim relief judgment exist in Italy. Parties must be represented by an attorney during such proceedings.

The Italian Code lists three typical and one general interim measure. The three typical interim measures are:

Seizure (*sequestro*): This normally will involve either:

- a judicial attachment which may be used on (i) movable or immovable assets when the relevant ownership is in dispute, or (ii) documents (a) from which evidentiary elements can be taken, (b) when the right of exhibiting them is controverted, and (c) it is necessary to store them temporarily - *Sequestro Giudiziario*; or
- a preservation order which may be issued on any asset of the debtor, in circumstances where there are grounds to believe that the debtor might deplete such assets to the creditor's detriment - *Sequestro Conservativo*. Further details on seizure are set out in Prejudgment attachments and freezing orders.

Denouncement of new work and feared damages: As to the former, a party who has grounds to fear that its ownership, rights in rem or possession over land will suffer imminent damage as a result of new work commenced by a third party can denounce such new work, and ask the court to issue an order preventing the work from continuing or otherwise addressing the applicant's concerns. Equally, when the grounds to fear imminent damage is due to a building, tree or another dominant item, the applicant may request the court to grant an order that seeks to eliminate the risk of such damage; and

Measures of preventive investigation: These measures can be ordered by the court prior to the commencement of the main proceedings. They are aimed at securing evidence in advance, thereby avoiding the risk of such evidence subsequently becoming unavailable. Typical preventive investigation measures include: (i) examination of witnesses when there are grounds to believe that such witnesses will not be available at the hearing due to a terminal illness, (ii) inspection of objects or places, and (iii) technical examination.

The two most commonly used measures are seizure and the procedures of preventive investigation.

If a situation cannot be remedied by the usual interim measures provided for by law, it is possible to request a general remedy (Article 700 of the Italian Code). The party wishing to apply for such a general remedy must follow the same procedure and satisfy the same requirements as for the typical interim relief measures. The content of such a general remedy is established by the court on a case-by-case basis according to the precautionary need which must be met.

Prejudgment attachments and freezing orders

In Italy, there are no prejudgment attachments or freezing orders. However, some interim measures, such as seizure (*sequestro*, also referred to in Interim relief proceedings), have the same effect as a prejudgment attachment or freezing order and prevent a defendant from dealing with the assets seized.

In order for a seizure to be granted, the applicant will need to meet the same requirements for all the other interim measures, namely:

- *fumus boni iuris*, which is a prima facie case of the right claimed; and
- *periculum in mora*, which is a well founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

As with all other interim measures, the request is to be filed:

- before ordinary proceedings have started, with the judge who would be competent to hear the ordinary proceedings. If a foreign judge would be competent for the ordinary proceedings, the request is to be filed with the judge in the place where the measure is to be enforced; and
- pending the ordinary proceedings, with the judge that is in charge of the ordinary proceeding.

As with all other interim measures, the seizure can be granted ex parte whenever participation by the other party in the hearing would endanger the positive outcome of the measure. In such circumstances, a hearing must be scheduled no later than 15 days after the measure is granted. At the hearing, the measure can be confirmed, amended or revoked.

Assets which may be seized, by service or with the assistance of a judicial office, include movable and immoveable assets and claims on third parties, with the exception of all those goods whose seizure is forbidden by the law (e.g. furniture that is necessary for the debtor and the debtor's family to live).

As with all other interim measures, the judge granting the seizure shall set a timeframe, which shall be not longer than 60 days, within which a claim on the merits must be commenced. Where this timeframe is not adhered to, the interim measure will become ineffective.

There is no specific provision that sets out the liability of a creditor for any damage caused to the debtor by an interim measure. However, the general rule regarding responsibility for causing losses to third parties contained in Article 96 of the Italian Code may apply. Therefore, if the party who requested the seizure loses the substantive proceedings and it is deemed to have acted in bad faith or with gross negligence, it may be held responsible for all the damages caused to the other party. Moreover, a creditor may be held responsible for any damages caused to the debtor by the seizure if: (i) it is later found that the right for which the seizure was granted does not exist, and (ii) the creditor acted without due diligence.

In addition to seizures and other interim measures which have similar effects, at the request of a party within ordinary proceedings, a judge can order the payment of sums or the delivery of assets before the conclusion of the proceedings. Such orders may be made when: (i) the sums are not disputed by the parties, (ii) the conditions required for a seizure referred to above are met, or (iii) at the end of the evidence phase the judge deems that the claimant's right to payment or the delivery of assets has been proven. The purpose of such orders is to enable enforceable decisions on certain matters to be made in a shorter time than the judge may need to reach a final decision. These orders allow the party to commence an enforcement procedure, in line with normal enforcement proceedings.

Costs

The unsuccessful party is generally ordered to pay the other party's legal costs (including attorneys' fees). The amount to be paid is decided by the court and usually represents only a proportion of the legal costs actually incurred.

If the losing party has commenced or carried on civil proceedings in gross negligence or in bad faith, the successful party can claim damages caused by the other party's behaviour (per Article 96 of the Italian Code) together with a fine of between EUR500 and EUR5,000.

As a general rule, Italian law does not provide for punitive damages.

Court fees vary depending on the amount in dispute and the stage of the proceedings (i.e. first instance, appeal or appeal to the Supreme Court (*Cassazione*)). They range from approximately EUR40 to EUR 4,000.

Class actions

The following three types of rights can be protected through a class action:

- contractual rights of a group of consumers or end-users who are all in the same position with a particular company;
- similar rights that end-users of a given product or service have with a particular manufacturer, even in the absence of a direct contractual relationship; and
- similar rights to the restoration of losses suffered by consumers and end-users due to wrongful commercial practices or anticompetitive practices.

Italian law provides for two different types of class action proceedings:

- the ordinary regime under Articles 840-*bis* et seq. of the Italian Code that enables consumers and / or non-consumers to seek compensation for damages and / or restitution from undertakings or public service operators or utilities providers that have harmed their rights; and
- the new regime for representative actions under Articles 140- *ter* et seq. of the Italian Consumers' Code, which grants consumers an enhanced protection against domestic and cross-border infringements in a broad range of areas such as product liability, data protection, travel and tourism, GDPR, and financial services, etc.

Both types of class action are subject to a common procedure consisting of three different phases: (i) an initial phase, which investigates the admissibility of the claim brought against the defendant on a preliminary basis, (ii) a second phase where, after the merits of the case have been assessed by the Court, a judgment upholding or dismissing the case is issued, and (iii) a final phase where the court determines the amounts eventually due to each and every class member who had opted into the class action.

Depending on the difficulty and complexity of the case brought by the claimant, a class action in first instance proceedings may last at least 30 to 36 months.

In particular, whilst it may take up to 12 to 18 months for a judgment on the merits of the case to be rendered by a First Instance Court, the liquidation phase may take at least 18 to 24 months depending on the overall number of class members who opted into the class action.

Since the entry into force of the regime of class action proceedings provided for in Article 140-*bis* of the Italian Consumers' Code in late 2009, Italy has adopted an opt-in model for class actions. According to both the current regime for class action and the newly adopted regime for representative actions, customers are allowed to opt into the class action in two different phases, namely: (i) immediately after the release by the Court of the order declaring the class action to be admissible, and (ii) after the Court has entered judgment on the merits of the case.

According to Italian law, a judgment on the merits of a case is binding on all customers who have joined a collective action. However, customers who opt into a class action do not become parties to the proceedings. It follows that, except for the cases provided for by Article 840 *decies* of the Italian Code (that, according to Article 140 *novies* of the Italian Consumers' Code, also apply to representative actions) a judgment dismissing a claim brought in the interest of customers whose rights have been affected by illicit conduct of a defendant, cannot be appealed individually by each class member but only by the party who had initially brought the class action.

According to the ordinary regime for class action under Article 840-*bis* et seq. of the Italian Code, standing to start a collective action is conferred on each class of member whose rights have been affected by defendant's illicit conduct, and non-profit or associations listed in the public registry kept by the Italian Ministry of Enterprises and Made in Italy.

Conversely, consumers are not entitled to bring a representative action on their own. Representative actions may only be brought by qualified entities, even without being previously mandated by consumers.

In particular, domestic representative actions can be started by (i) national associations of consumers or users included in the list referred to in Article 137 of the Italian Consumers' Code, (ii) non-Italian entities designated by Member States to bring cross-border representative

actions before the court of a Member State other than the one on which they were designated, and (iii) national independent public bodies referred to in Article 3, paragraph 6 of EU Regulation 2017/2394.

Cross-border representative actions may only be brought by national independent public bodies or consumer associations (or users) which comply with the requirements for the registration in the special section of the list referred to in Article 137 of the Italian Consumers' Code as provided for by Article 140 *quinquies* of the Italian Consumers' Code.

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Ireland

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Overview of court system

Ireland operates a common law legal system within the European Union and has a written Constitution which sets out certain fundamental rights and legal processes.

Legislation is passed by the Oireachtas (parliament), and case law (in the form of published judicial decisions) is binding as legal precedent.

The official languages of the state are English and Irish (Gaeilge), and either of the two official languages can be used in court proceedings.

Most commercial cases are heard in the High Court, which is the court of unlimited original jurisdiction. It hears cases where the claim is worth more than EUR75,000 (or EUR60,000 in personal injury actions). Civil cases are usually heard by one judge. Juries are used in defamation cases (although this is currently under review by the legislature).

The Commercial Court is a specialist division of the High Court and a party can apply for its case to be heard by the Commercial Court if: (1) the case is valued at over EUR1 million; (2) it is a trademark or copyright dispute; or (3) if the Commercial Court agrees to hear the case because it is commercial in nature. The Commercial Court operates a strict case-management system and is an efficient and reliable process for dispute resolution (with the vast majority of Commercial Court matters being decided within a year). The High Court also has specialist lists and judges for matters such as competition law, arbitration, judicial review, commercial planning and environment.

There is no monetary limit on awards made by the High Court. It hears administrative/judicial review applications challenging decisions made by certain tribunals and state bodies. It also hears appeals from the Circuit Court (and can decide points of law on cases referred from the District Court).

High Court decisions in civil matters can be appealed to the Court of Appeal where they are determined by three judges. Cases can be further appealed to the Supreme Court if they concern matters of general public importance or it is necessary in the interests of justice.

Although the Supreme Court is the final court of appeal, points of unsettled EU law may be referred to the Courts of Justice of the European Union.

The Circuit Court and District Court are courts of limited and local jurisdiction and are located throughout Ireland. The District Court hears claims valued at up to EUR15,000 and the Circuit Court hears claims valued between EUR15,000 and EUR75,000 (or up to EUR60,000 in personal injury actions).

There are also several administrative bodies and tribunals which adjudicate in specialist areas (such as An Bord Pleanála for planning appeals, the Labour Court, the Employment Appeals Tribunal etc.)

Ireland's legal system is entirely separate to Northern Ireland.

Limitation

Claims for tort and breach of contract (and actions to enforce arbitral awards) generally must be issued within six years (under the Limitation Act 1957).

Cases arising from breach of a deed have a longer limitation period and must be issued within 12 years.

Certain cases attract special limitation periods, most notably:

- claims for defective products, which must be brought within 3 years of damage (and there is a longstop date of 10 years following circulation of the product);
- defamation claims, which must be brought within one year (which can be extended to two years in certain circumstances);
- personal injury claims, which must be brought within two years;
- regular judicial review actions, which must be brought promptly and in any case within three months of the decision which is being challenged; and
- judicial review actions for planning matters, which must be brought within eight weeks of the decision of the planning authority.

If a cause of action has been concealed by fraud, this will normally extend the limitation period.

Procedural steps and timing

There is no general mandatory pre-action protocol in Ireland (except for personal injury cases). However, it is standard practice for the parties to engage in pre-action correspondence before proceedings are commenced (and there can be cost consequences for a failure to do so). In addition, a plaintiff's solicitor is obliged to advise their client on the possibility and advantages of mediation before a claim can be filed.

High Court proceedings are commenced by the plaintiff filing an originating summons in court and serving it on the defendant. The originating summons is a brief document and does not set out the full details of the claim.

The defendant must then file an "Appearance" (a short, one-page document confirming that it intends to defend the claim) at the court office within eight days of service of the originating summons. If the defendant does not enter an appearance, the plaintiff can seek judgment in default of Appearance.

The plaintiff then serves a statement of claim setting out the relevant facts and the basis for its claim. This can be served up to eight weeks from the service of the originating summons (and failure to do so can allow the defendant to apply to the court to strike out the claim).

The defendant serves its defence within eight weeks of the statement of claim (although in practice a defendant may adopt certain practical measures to try to defer serving its defence, e.g. by issuing a notice to the plaintiff requiring it to provide further particulars of its claim). However, failure to deliver a defence within the time period can enable the plaintiff to seek judgment in default of defence for the entire amount of the claim. In practice the defendant must be put on notice of this, which will allow the defendant some time to deliver the defence and avoid judgment in default.

Once the parties have exchanged these pleadings, they engage in documentary discovery. This begins with voluntary requests for discovery specifying categories of documents/data to be provided and setting out reasons for each category. The requesting party must show that the documents are relevant and necessary. If the parties cannot agree on discovery, they can apply to the court to issue an order for discovery.

In the Commercial Court, the parties will exchange expert reports and witness statements. This is not automatically done in regular High Court proceedings (but can be ordered by the High Court in the course of pre-trial motions or applications to determine directions on timelines, case management or other pre-trial issues).

Timelines can generally be extended by consent or with the court's permission (but the court also has the power to impose cost consequences). As noted, the Commercial Court adheres to a stricter case management system.

The standard of proof in civil cases is the balance of probabilities.

The length of time for proceedings in the High Court from start to finish will usually be between one and two years (with Commercial Court cases generally being disposed of more quickly, the majority being decided within 12 months).

In Ireland, legal representation is mandatory for companies in proceedings, however, an individual may choose to represent themselves.

Disclosure and discovery

As soon as parties become aware of the possibility of Irish litigation, they are under an obligation to preserve any relevant evidence. The discovery process is designed to allow parties in civil litigation to obtain from an opponent all documents relevant to the issues in dispute. Documents which are legally privileged must be listed in the discovery schedule, but they can be withheld from production. However, documents which are confidential or commercially sensitive must usually be produced (except in very limited circumstances). Documents which are discovered must only be used for the purposes of the case (and using those documents for any other purposes could be considered contempt of court).

Discovery usually takes place once the pleadings have closed. There is no provision for discovery to be sought before the case is commenced (although in certain cases a party may be able to seek a Norwich Pharmacal order which allows for a very limited form of discovery before the case is commenced).

Each party makes a written request to the counterparty for a list of all documents/data relevant to the dispute (and which the counterparty has, or previously had, in its possession, power or procurement). The request sets out the categories of documents being sought (and states the reasons why each category is required). If the counterparty refuses the request or disputes the scope of the categories, the requesting party applies to the court for an order requiring discovery to be provided. The court has the discretion to vary the terms of the categories of discovery which the parties are seeking. The parties then each swear an affidavit of discovery which lists all relevant, privileged and non-privileged documents, following which the documents which still exist (and are not legally privileged) are disclosed to the other side.

A party may also look for discovery against a non-party if the document is not reasonably available by other means. However, the applicant must meet a high standard of proof of relevance and necessity and the decision remains at the court's discretion. The applicant will also bear the associated legal costs.

Default judgment

Default judgment can be sought from the court where a defendant has failed to:

- enter an appearance within eight days of the originating summons being served (or such other time as the court may have ordered); or
- deliver a defence, generally within eight weeks following service of the statement of claim (however in practice a defendant may try to extend this deadline, e.g. by issuing a Notice for Particulars).

Before applying to the court for a default judgment, a plaintiff must serve a warning letter on the defendant 28 days in advance. If the defendant does not take the necessary action in that time, then the plaintiff may file its motion. This must then be served on the defendant.

A defendant may apply for a case to be dismissed if:

- the claim is frivolous or vexatious;
- there is no reasonable cause of action; or
- the court does not have jurisdiction to hear the claim.

A default judgment will grant all of the reliefs sought by the plaintiff. A defendant can, in limited circumstances, seek to challenge a default judgment. Generally, this will involve demonstrating some irregularity in the proceeding or arguing that it is in the interests of justice. Any challenge should be brought without "inordinate or inexcusable delay". This is not strictly defined, and the court will balance the delay against the interests of justice (which favours allowing parties to have a hearing on the merits and not have the case decided by default). Even if the default judgment is set aside, there can still be cost implications for the defendant, depending on the circumstances (in particular if there has been a delay in challenging the default judgment).

Appeals

Judgments in civil cases in the High Court can be appealed by a notice of appeal which must be lodged with the appellate court within 28 days following "perfection" of the court order (i.e. the date on which the court registrar draws up the final written form of the order).

An appeal does not automatically suspend or stay the judgment or decision being appealed, but a stay can be ordered by the court pending the appeal.

The appellant must serve the notice of appeal on all parties directly affected by the appeal within seven days and the respondent must lodge and serve a respondent's notice within 21 days of the notice of appeal being served on them. The timeframe for the court to hear an appeal will depend on the court's timetable, however it generally takes at least six months (and can be more than 12 months) unless the appeal is expedited/case managed).

The Court of Appeal (for civil matters) was established in 2014 and acts as the appeal court from the High Court. However, it is possible to "leapfrog" the Court of Appeal and appeal directly to the Supreme Court if the Supreme Court agrees that there are exceptional circumstances that warrant it and one or both of the following factors applies:

(i) it is a matter of general public importance; and/or

(ii) it is the interests of justice.

An appeal can be made both on points of law/procedure and fact. However, an appeal is not a full re-hearing of the case (and new evidence can only be introduced in special cases). Therefore, an appeal will generally only consider the correctness of the High Court's decision based on the evidence before the High Court at trial. In addition, the Supreme Court will only hear appeals concerning matters of general public importance or the interests of justice (errors at trial will not, by themselves, warrant a hearing in the Supreme Court).

Interim relief proceedings

Interim relief is available to parties if there is an urgent need to protect their legal rights (either by preserving the status quo or preventing a party from taking certain actions).

Most injunction applications are made either in the Circuit Court or in the High Court (depending on the case). Applications for interim relief are typically sought on an urgent, time-sensitive basis and are made *ex parte* (i.e. without notice to the other side).

The criterion for obtaining interim relief varies depending on the type of relief sought, but the overarching principles the court will consider for an interim/interlocutory injunction will include:

- whether there is a serious/fair issue to be tried;
- whether damages would be an adequate remedy; and
- whether the balance of convenience lies in favour of granting the injunction.

The applicant must also give an "undertaking as to damages" (i.e. an undertaking to the court that any losses suffered by the respondent as a result of injunction will be paid by the applicant if the applicant later fails in its case at trial).

There are various types of injunction which can be sought:

- Interim injunctions - in cases of great urgency on an "*ex parte*" basis. Interim injunctions will usually be limited for a short period (usually a number of days) until an application for an interlocutory injunction (on notice to the other party) can be heard. The applicant must give full and frank disclosure of all relevant facts for "*ex parte*" applications;
- Interlocutory injunction - this can be to seek the continuation of an interim order which has been made, or a party might apply directly for an interlocutory injunction if matters are less urgent and proceedings are ongoing (but not yet concluded) and the injunction is required to protect the status quo until matters are determined fully at trial;
- *Quia timet* injunction - where a wrongful act is threatened or anticipated but has not actually occurred and the injunction is required to prohibit this act;
- Anti-suit injunction -when a case is pending or threatened in another jurisdiction and it would be unjust for this to proceed, this injunction will prohibit a party from bringing the case in that foreign jurisdiction;
- Mareva injunction - where there is a concern that a defendant might remove, conceal or dissipate assets, this injunction is sought to prevent a defendant from dissipating assets below a specified amount; and

- Anton Piller injunction - to protect evidence, this injunction entitles a plaintiff to enter the defendant's premises to inspect and potentially seize evidence.

A decision to make or refuse an order for interim relief can be appealed by either party to the High Court or Court of Appeal (depending on which court made or refused the order). An appeal will not automatically suspend or stay the order being appealed, but a stay can be ordered by the court pending the appeal. The timeline for appealing a decision to make or refuse an order is the same as other appeals (i.e. within 28 days following "perfection" of the court order).

Legal representation is not mandatory to seek, or resist, interim relief. However, given the potential complexity and the legal tests to be met, it is generally the case that both parties will be legally represented.

Prejudgment attachments and freezing orders

Prejudgment freezing orders are a form of interim relief and are referred to as "Mareva injunctions". As noted above, this restrains a defendant from disposing of assets or property where the defendant intends to do so in order to frustrate an actual or anticipated court order.

These orders can restrain a defendant from dealing with assets in Ireland and overseas (though local enforcement proceedings in the relevant overseas jurisdictions may be advisable to safeguard the effect of the order). It is important to note that an order will only restrain the defendant from dealing with the assets and does not give the plaintiff any right to them.

The court has discretion as to whether to grant a freezing order and will do so only if:

- There is a substantive cause of action capable of being enforced against the other party;
- The applicant has a good arguable case (and the burden of proof here lies solely with the applicant);
- The applicant can establish that there is a real risk the respondent will remove their assets or otherwise dispose of them in some way with the sole view that the applicant would not be able to recover what is due to them and that a court order would be frustrated. There must be evidence of the respondent's intention (and it is not enough to show that the assets are likely to be disposed of in the ordinary course of business);
- The assets are capable of being frozen; and
- The balance of convenience lies in favour of granting the injunction.

The usual requirements for injunction applications will also apply (full and frank disclosure, undertaking as to damages etc).

Costs

Court fees are fixed by orders of the different courts and the level of court fees depends on the court in which the case is brought. An updated list of fees can be found here.

Subject to certain exceptions, the general rule is that the successful party is entitled to recover its legal costs from the unsuccessful party (in addition to any damages awarded by the court). This covers both court fees and legal fees/attorneys' fees. However, a party will rarely be awarded all of their legal costs. The general rule is that in practice a successful party normally recovers around 60 - 70% of their total costs incurred. However, the court has wide discretion when awarding costs, and may depart from the general rule depending on the circumstances of the case and the conduct of the parties.

Class actions

Multi-party actions in Ireland generally proceed by way of:

- Representative actions - where a number of cases have been filed by multiple parties who have the same interest in the underlying cause or matter, one or more parties may be selected (or authorised by the court) to sue or defend the case on behalf of all of the interested parties; and
- Test cases - where the same circumstances form the grounds of numerous individual claims and the court decides one case (or a select number of cases) first. The outcome of these "test cases" are then used to determine the outcome of the remaining cases.

However, each case may still require its own hearing to determine the amount of damages.

Test cases tend to occur more regularly than representative actions as representative actions generally only arise where the parties have a pre-existing relationship with the lead party.

It is also worth noting the following specific provisions:

- A new piece of legislation (The Representative Actions for the Protection of the Collective Interests of Consumers Act 2023) was signed into law on 11 July 2023. This Act will provide the first effective framework for collective redress in Ireland allowing many low-value individual claims based on breaches of EU consumer law to be bundled together by a "Qualified Entity" and litigated in a single action (known as a representative or class action) at both national and cross-border level; and
- The Irish Data Protection Act 2018 (which implements the GDPR) provides limited scope for representative actions whereby an action for breach of data protection rights can be brought on behalf of a data subject by a Not-for-Profit body.

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Japan

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Overview of court system

Japan is primarily a civil law country, where codified laws predominate. However, case law offers non-binding guidance that may, in some cases, be persuasive, and may be relied upon providing it does not conflict with the codified laws.

The Supreme Court, the highest court in Japan, exercises final appellate jurisdiction within Japan's judicial system. The Supreme Court has jurisdiction to hear cases involving:

- violations of the Constitution;
- serious procedural breaches by the lower courts; and
- important issues concerning the construction of laws and regulations.

Decisions in the Supreme Court are made either by the grand bench, composed of the entire body of 15 justices sitting together, or by one of the three petty benches, composed of five justices each.

Japan has eight high courts, each with corresponding regional jurisdiction. The eight high courts are located in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu. High courts generally have appellate jurisdiction over judgments rendered by district courts and family courts, as well as original jurisdiction for certain criminal matters. Typically, a case heard by the high court will be adjudicated by a panel of three judges.

The Intellectual Property High Court in Tokyo is the only specific high court. It was established in April 2005 to handle cases relating to intellectual property, such as appeals from district courts in civil cases relating to patent rights and actions against decisions made by the Japan Patent Office.

There are 50 district courts in Japan, each with territorial jurisdiction over a single *prefecture* - with the noted exception of Hokkaido Prefecture, which is divided into four districts. The 49 district courts are separated into branches; there are 203 branches in total. The district court will generally be the court of first instance for civil and criminal matters, and also serves as the appellate court for judgments arising from summary courts. Cases heard in the first instance in district courts are adjudicated by either one or three judges, and appeals from summary courts are heard by three-judge panels.

There are 438 summary courts throughout Japan. The summary courts have jurisdiction over civil cases involving claims for amounts of up to JPY1.4 million (c. EUR11,000) and certain criminal cases. Summary court cases are adjudicated by a single summary court judge.

There are 203 branches and 77 local family courts throughout Japan. The family court has jurisdiction over divorce and ancillary child custody where the child is domiciled in Japan.

Litigation is only conducted in the local official language in Japan (i.e., Japanese).

Limitation

Under Japanese law, the general statute of limitations period for civil claims (excluding tort) is five years from when the claiming party

recognizes grounds of claims (e.g., due and payable, defect, default, breach, etc.) or ten years from the moment the grounds occur, whichever is earlier. For tort claims the limitation period is three years from when the claiming party discovers they have suffered damage and knows the identity of the tortfeasor, or twenty (20) years from the moment the tortious act was made.

Procedural steps and timing

A civil claim is commenced by a plaintiff filing a petition together with supporting evidence. A petition must specify the parties and contain particulars of the claim, as well as a statement specifying the relief sought. *Revenue stamps* of a certain value must be affixed to the petition as a filing fee. Once a petition and a writ of summons are served on the defendant by the court via Japan Post's special service delivery, the defendant is required to file a written answer within the period stipulated by the court, which is commonly 40 to 50 days. A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a claim without appointing an attorney.

Thereafter, several preparatory proceedings will be held in order to clarify core issues in the case and both parties will submit documentary evidence to the court and make oral arguments. Court hearings in a case are usually held every one or two months. Witnesses are generally examined after the parties have submitted documentary evidence and made oral arguments. Once all of the evidence has been examined, a judgment will generally be rendered within two months. In first instance cases, judgment is typically given within less than twelve months from the petition being filed.

The court also offers online document submission through the court's own cloud service, often referred to as "mints", and online conferencing through Microsoft Teams. The "mints" submission system is still being implemented and is expected to be available in all district courts by approximately November 2023.

Labor, or employment, cases are another important type of legal dispute. There are two basic types: individual employment cases, which are between an employer and an employee, and collective employment cases, which are between an employer and a union. In April 2006, Japan introduced the Labor Adjudication System for individual employment cases. Under this system, three adjudicators (one serving as judge, one representing the interests of the employer and one representing the employee respectively) form a Labor Adjudication Committee that endeavours to resolve the dispute by mediation or adjudication in no more than three sessions. The objective of this system is to resolve cases quickly, appropriately and effectively. Cases which are not resolved under this system are referred to ordinary judicial proceedings.

Disclosure and discovery

In Japan, the parties are free to determine which evidence they want to rely on in proceedings. In limited cases, Japanese courts have authority to order parties to disclose documents based on their relevance to the case. Parties seeking an order for disclosure must specify:

- the description of the documents;
- the name of the individual believed to hold relevant documents;
- the summary of the documents;
- the assertions to be proved by such documents; and
- the legal basis to request the disclosure.

US-style discovery proceedings do not exist in Japan. Therefore, the ability to obtain potentially beneficial evidence from an uncooperative opposing party is generally limited.

Discovery claims can be filed before and/or after the commencement of proceedings. However, the procedure before commencement of the litigation cannot force the party having the documents to submit it, and the scope is limited. Therefore requests must be made as orders are not available.

However, after the litigation has commenced, evidence can be obtained ex parte if the court issue the disclosing-order to the party following a request for the order; the court has no independent authority to issue a disclosing-order. However, the ability to obtain potentially beneficial evidence from an uncooperative opposing party is limited other than the disclosing-order.

Lastly, certain documents excluded from discovery claims for example, matters relating to the professional secrecy of public officials,

matters relating to the professional secrecy of doctors and lawyers, and matters relating to technical secrecy may be excluded.

Default judgment

Where the defendant does not clearly state whether they dispute the facts stated by the plaintiff in their complaint by a court set due date, the facts submitted by the plaintiff are deemed as accepted by the defendant, which is commonly called "Constructive Admission" under Code of Civil Procedure Art. 159. Although courts are still granted discretion in statutory interpretation, other than fact-finding in the case of Constructive Admission, the court mostly issues a judgment granting all of the plaintiff's claims. This rule applies to both parties, not just the defendant, and the applicable documents are not limited to the complaint.

The court may render a final judgment if the plaintiff who has appeared requests a conclusion of the case and the court deems it appropriate, taking into consideration the current status of the case and the status of the parties' pursuit of the case. Even if the defendant does not appear and does not clarify their argument, the court has to examine the merits of plaintiff's claim when rendering a default judgment.

If a default judgment is rendered in the first instance, the appeal period is two weeks from the day following the day on which an authenticated copy of the judgment of the first instance is served.

Appeals

A party dissatisfied with a judgment at first instance may file an appeal by submitting a petition of appeal within two weeks of receipt of the judgment from the court of first instance. An appellant is required to file detailed grounds of the appeal within 50 days after filing a petition of appeal if such grounds are not provided in the petition. The respondent must file an answer by the date stipulated by the court, which is usually one to two weeks before the court hearing. Although there is no statutory limit on the number of court hearings that may be held on appeal, usually only one or two hearings are held. A party may be allowed to submit supplemental written submissions. It typically takes between 6 and 12 months from submitting the petition of appeal to a final decision on appeal, but the process may take longer in complex cases.

A party dissatisfied with a judgment of a court of second instance may file an appeal to the Supreme Court, but only if: (i) it is alleged that the second instance judgment violates the Constitution; or (ii) even where no violation of the Constitution is alleged, the judgment involves material matters concerning the interpretation of laws and regulations. In these cases, a party may file a petition for leave to appeal to the Supreme Court within two weeks of the second instance judgment being handed down. This petition for leave to appeal invites the Supreme Court to exercise its discretion to accept the final appeal. In the event that the Supreme Court agrees to hear the appeal, it typically takes between four and six months for the final judgment to be given. It tends to take longer when the Supreme Court overturns decisions by the lower courts.

A judgment becomes final and binding once it cannot be further appealed. Parties may not dispute the contents of final and binding judgments unless certain exceptional circumstances exist.

An appeal does not automatically suspend the enforceability of the original judgment. A separate petition to suspend/stay enforcement must be filed.

While the purpose of the appeal court is to review the judgment of the first instance, the appeal court will include newly collected evidence and materials in addition to the evidence and materials of the first instance (System of Continuative Instance). Therefore, the merits and facts should be reconsidered in the appealing court. The appellate court (i.e., the third/last instance) conducts hearings only on legal issues, and the appellate court is, in principle, bound by the facts found in the original judgment.

Interim relief proceedings

Japanese courts can grant interim relief to protect property and secure the enforceability of the judgment. The following forms of interim relief are available in Japan:

- an order of provisional attachment available to potential plaintiffs (creditors) who wish to freeze the potential defendant's (debtor's) assets to secure collection of their monetary claims;
- a provisional order (referred to in Japan as provisional disposition), which is used to preserve disputed property in certain types of non-monetary claims; and

- a provisional disposition to establish an interim legal relationship between the parties to avoid substantial detriment or imminent danger caused by the disputed relationship.

Further detail on the first two types of interim relief can be found in the paragraph on Prejudgment attachments and freezing orders.

In relation to the provisional disposition to establish an interim legal relationship, an *obligee* can file a petition with the district court to prove a legal relationship with *obligor*. The petition must have either (a) jurisdiction over the merits of the case; or (b) jurisdiction over the location of the disputed subject matter. An *obligee* can request this measure until a judgment on the merits has become final and binding (i.e. an *obligee* is able to request provisional relief even in second instance). A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a petition for provisional relief without appointing an attorney.

As to the criteria to obtain such provisional disposition, in order to be successful, the applicant must establish that there is a prima facie case that (i) the disputed legal relationship exists; and (ii) an order is required to avoid substantial detriment or imminent danger to the petitioner. Before granting this type of relief, the court will usually convene a hearing to hear both parties' positions.

The timeframe to resolve applications to determine a provisional legal status is generally between one and four weeks from the application being filed to the remedy being awarded. An *obligee* may file an appeal against a judicial decision to dismiss a petition for an order for a provisional relief within an unextendable period of two weeks from the day on which the *obligee* was notified of such decision. Where the court dismisses the appeal for provisional relief, no further appeal may be filed against such judicial decision. On the other hand, where the court issues an order for provisional relief, the obligor may (at any time) file an objection to the order with the court which issued the order.

In addition to the above interim relief measures, in some cases, it is also possible to obtain an interim judgment, which will settle certain matters that are ripe for determination before the final judgment. An interim judgment will be binding on the court that issued it, but it cannot be appealed or enforced by the parties. Japanese law does not establish a procedure for obtaining such judgment. Japanese courts can, in their discretion, issue an interim judgment on part of the dispute before rendering a final judgment providing both of the following conditions are satisfied: (i) the element of the dispute subject to the interim judgment is independent from the main matter in dispute, and (ii) it is feasible to give judgment on that element. In addition, the interim judgment is also available when issues of liability and quantum can be determined separately, and the court considers that liability should be determined first. An interim judgment can be useful, particularly in large or complex disputes, to reduce the number of disputed issues in subsequent proceedings. However, interim judgments are rare in practice.

Interim relief may be granted ex parte in some instances. For example, the court need not hear the opposing party in a proceeding that requires secrecy, as in an asset freeze case. However, in a provisional disposition to establish an interim legal relationship between the parties to avoid substantial detriment or imminent danger caused by the disputed relationship, the court must hold a hearing and grant the opposing party an opportunity to submit their arguments.

Interim relief measures should be obtained before, during and/or after proceedings on the merits of the main proceedings. Interim relief measures must be filed by the creditor as a plaintiff within a certain period of time (specified by the court, not less than two weeks) after the interim relief measures have been issued. If the creditor does not file the main action, the court may withdraw the interim relief measures upon motion of the debtor.

The creditor can appeal to a higher court if its request for interim relief measures was declined. The creditor has to submit an appeal within 2 weeks after being notified that the court declined its original request for interim relief measures.

The debtor has an opportunity to challenge the order of the interim relief measures. The court that ordered the interim relief measures will examine the challenge and hold a hearing with both parties. It may take over one month until the court delivers a decision. Both parties can appeal to a higher court on the court’s decision of the challenge. The party has to submit an appeal within 2 weeks after receiving service of declining its challenge for interim relief measures. A challenge/appeal does not automatically suspend the enforceability of the interim relief measures. A separate petition to suspend enforcement must be filed.

Prejudgment attachments and freezing orders

As noted in the paragraph on Interim relief proceedings, plaintiffs wishing to secure assets may apply for the following types of provisional remedies by filing a petition at the district court:

- in respect of monetary claims, a provisional attachment order, which will freeze the debtor's assets including immovable and movable assets, bank accounts, shares and monetary claims to third parties in order to secure collection of the monetary claim; or

- in respect of non-monetary claims, a provisional disposition order to prevent a debtor from disposing of a property the subject of the dispute to any third party.

The procedure for these civil provisional remedies is generally ex parte.

The courts will only award these provisional remedies where the creditor can substantiate an underlying claim and demonstrate that there is an imminent risk that an eventual judgment would become impossible to enforce without provisional protection. It takes only a few days from the application being filed to the remedy being awarded. The provisional remedy is revocable by the court if: (a) the creditor does not file a substantive claim within the period stipulated in the court order made in response to the provisional remedy application (the minimum period which will be stipulated is two weeks); or (b) a creditor's claim is rejected in the final judgment by the courts. A creditor may be liable for damages suffered by an obligor as a result of the application of provisional remedies.

Civil execution is a procedure by which an obligee may compel an obligor's payment of a debt by seizure and sale of the obligor's property. For instance, if a debtor fails to make a monetary payment due under a contract, the creditor (based upon a claim that has been affirmed by a judgment or a judicial settlement) may be granted the right to seize the debtor's property, sell it by auction, and distribute the proceeds in satisfaction of the claim.

If the plaintiff who froze the defendant's bank account loses the lawsuit, the plaintiff may be liable for damages suffered by the defendant caused by the freezing order. Therefore, when issuing a freezing order, the court requires the plaintiff to make a deposit of 20-30% of the amount claimed.

Prejudgment attachments, such as freezing bank accounts, are taken before a claim on the merits. However, the main proceedings (litigation) must be filed by the creditor as a plaintiff within a certain period of time (specified by the court, not less than two weeks) after issuing of the interim relief measures. If the creditor does not file the main action, the court may withdraw the interim relief measures (prejudgment attachments) upon motion of the debtor.

Costs

In litigation, court costs comprise:

- court fees (calculated by reference to the sums claimed and paid by the plaintiff at the time of filing, e.g. the fee payable in a claim worth JPY10 million (c. EUR79,000) would be JPY50,000 (c. EUR400));
- experts' fees; and
- costs of other services required for the court proceedings.

As a general rule, the losing party will be ordered to bear these court costs at the time of judgment. However, in cases where the plaintiff is successful on only part of its claim, costs will be apportioned between the parties by reference to the outcome. A court may order all successful parties to pay a certain portion of the costs in the interests of fairness. Moreover, lawyers' fees are not included in court costs; legal fees are merely regarded as one element of the damages to be claimed. In most cases, the amount of legal fees that can be claimed is limited to a maximum of 10% of the total damages awarded and is payable in addition to those damages.

Class actions

There is no litigation structure similar to a class action in Japan.

However, the Act on Special Provisions of Civil Court Procedures for Collective Recovery of Property Damage of Consumers enables consumers to recover damages collectively in a simple and prompt manner. Claims brought under this Act must arise out of a contract concluded between a consumer and a business operator. In such claims, consumers are not able to claim certain losses, such as secondary losses, losses arising out of lost earnings, damages for personal injury/death, or damages for pain and suffering.

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Luxembourg

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Overview of court system

Luxembourg is a civil law jurisdiction, where the legal system is based on codified laws. Unlike common law systems, which heavily rely on precedent, Luxembourgish courts primarily rely on the principles and rules established in the law. However, previous court rulings in similar cases are given significant weight and consideration. This is especially true when a statute is ambiguous or lacks clarity, as it provides judges with the opportunity to establish legal principles through interpretation.

The official procedural languages used in court proceedings are French, German, and Luxembourgish. French remains the predominant language used in legal proceedings. However, it is worth noting that filing exhibits in English is possible, even though English is not an official language in Luxembourg.

Luxembourg has a Constitutional Court and two orders of jurisdictions: the judiciary, which handles civil disputes, commercial claims, criminal matters, and the administrative order, which resolves disputes with Luxembourg's administration. Additionally, there is a "social order" that deals with disputes related to social security matters.

The Constitutional Court reviews the constitutionality of laws. Its decisions are not subject to appeal.

The judicial order consists of three levels:

- the Magistrates' Courts (*Justice de Paix*), which serves as the court of first-instance and handles minor civil and commercial cases (there are three such courts, one in Luxembourg-Ville, one in Diekirch, and one in Esch-sur-Alzette) with a value up to EUR15,000 - as well as cases concerning employment and lease contracts;
- the District Courts (*Tribunaux d'Arrondissement*), situated in Luxembourg and Diekirch, which handle civil and commercial cases not assigned to other jurisdictions and which serve as criminal courts; and
- the Superior Court of Justice (*Cour Supérieure de Justice*) in Luxembourg City, which includes the Court of Cassation (*Cour de Cassation*), the Court of Appeal (*Cour d'Appel*), and the General Prosecutor's Office (*Parquet General*). The Court of Cassation reviews judgments issued by the Court of Appeal and final judgments from the District Courts and Magistrates' Courts.

The administrative order comprises the Administrative Tribunal and the Administrative Court. The Administrative Tribunal, located in Luxembourg, hears appeals against administrative decisions where no other appeal is available, and it typically deals with disputes related to tax matters. Appeals against decisions of the Administrative Tribunal can be filed with the Administrative Court, which serves as the supreme administrative jurisdiction. Luxembourg is also home to international courts, including the Benelux Court of Justice and the Court of Justice of the European Union (CJEU).

Limitation

There is a general limitation period of thirty years, which means that a claimant generally has up to thirty years to bring a legal action from the day they knew or should have known the facts giving rise to their claim. However, it is important to note that different subject matters may have specific limitation periods. For instance, commercial claims have a limitation period of ten years.

Procedural steps and timing

In Luxembourg, an ordinary civil lawsuit typically starts with a writ of summons (*assignation*) or, in certain procedures, it can also commence with a petition (*requête*), The key distinction between the two documents lies in the mode of service, with the writ of summons being served by a bailiff, appointed by the claimant, and the petition being served by a court clerk.

Procedural steps in Luxembourg differ whether the proceedings are conducted in writing or orally.

In written proceedings, once the writ of summons is served, the defendant has 15 days (which may be extended if the defendant resides abroad) to appoint their lawyer. The case will then be registered with the court clerk. Subsequently, the claimant is required to provide all supporting documentation to the defendant.

Upon service of the summons, the court typically establishes a procedural timetable for the exchange of pleadings between the parties. This timetable generally spans from 6 weeks to 3 months for each round of submissions. These periods can be extended, unless the court orders mandatory deadlines through an injunction.

The number of exchanges between the parties depends on the complexity of the case, but on average there will be two rounds of submissions. Additionally, simplified proceedings may be applicable for cases involving only one claimant and one defendant, where the amount in dispute is equal to or less than EUR100,000. Under this fast-track option, the defendant is granted a period of three months to respond to the claimant's writ of summons, followed by a one-month period for each party to file their submissions. Unlike in common proceedings, these deadlines are mandatory but may be extended once by the pre-trial judge. The judge may also order the production of additional submissions, either at their own initiative or upon a party's request.

During the proceedings, a case management conference will be scheduled to decide how the proceedings will conclude (*clôture d'instance*). This will be followed by the scheduling of the trial, at which the court will give its ruling.

In oral proceedings, the defendant is required to appear before the court on the date mentioned in the writ or petition. The court will then schedule another hearing - the trial – at which a ruling will be given.

In the District Courts, a party must be represented by a lawyer who is a member of the Luxembourg Bar (although there are a few exceptions, such as in oral proceedings). Representation by a lawyer is mandatory before the Court of Appeal and Court of Cassation. On the other hand, parties have the option to personally appear before the Magistrates' Courts or appoint a representative, who could be a lawyer, spouse, parent, or another authorized individual.

The duration of the proceedings is largely influenced by the workload of the court. In a simple civil lawsuit, the time from the service of the writ to obtaining a judgment is typically around 12 to 18 months. However, the proceedings can become more complex, leading to varying timeframes for each stage. Several factors - including procedures for the quantification of damages claims damages, the need for witness or expert hearings and disclosure disputes - can significantly extend a proceeding's duration.

Conversely, the parties can settle their dispute at any point during the proceedings, which can result in a suspension of the case upon mutual notification to the court. The proceedings may be suspended for other reasons as well.

Disclosure and discovery

In Luxembourg, whilst parties are required to support their statements with evidence, they generally have the freedom to choose the evidence they wish to rely upon. Each party must substantiate its claims and satisfy its burden of proof. Evidence is usually given in written form, including by way of affidavit.

In addition, it is possible to apply to the courts for an order requiring the compulsory disclosure of documents by another party. This application can be made either before the commencement of legal proceedings on the merits or during the ongoing proceedings. With regards to the pre-proceedings application, it is typically initiated through a writ of summons and followed by a hearing involving both the claimant and defendant. However, it is important to note that this measure can also be unilaterally requested, notwithstanding the fact that such a procedure deviates from the standard bilateral process. To reflect this, an applicant is required to provide strong justification for pursuing the unilateral procedure.

In principle, the purpose of a disclosure application is not to enable "fishing expeditions". The party making the request must have a legitimate interest, and the scope of the request should be limited to a specific group of documents. Additionally, the requested documents must be relevant to a legal relationship in which the requesting party is involved. It is also important to note that the request is

not limited to physical documents; it can also include any (electronic) documents stored on electronic devices.

Finally, legal professional privilege applies to communications between attorneys and certain other professionals. Generally, parties cannot be compelled to disclose privileged documents.

Default judgment

Default judgment is a decision issued against a defendant, by the court, following a hearing in which the defendant did not appear (or was not represented) and was not personally served with the writ of summons or petition. Subject to the admissibility of the claim, a judge will issue a default judgment on the sole basis of the submissions and evidence brought by the claimant.

If a defendant is confronted with a default judgment, they have the option to file an opposition before the court that issued the default judgment within 15 days from the date of service or notification. By filing an opposition, a defendant has an another opportunity to present their (legal and evidential) case before the court.

Appeals

The Court of Appeal hears appeals from the District Courts, with the District Courts acting as the appellate court for decisions issued by the Magistrates' Courts - except for employment disputes, which are appealed directly to the Court of Appeal.

A party wishing to challenge a decision of the first instance court usually has 40 days (which may be extended if the defendant resides abroad) from the date of service or notification of the decision. However, it is important to note that certain proceedings, such as appeals against interim orders, may have a shorter deadline of 15 days. The deed of appeal will be served by a bailiff, except in certain situation where the court clerk will handle service instead.

Certain decisions cannot be appealed:

- decisions rendered in first and last instance (that is, decisions for which the claim is less than EUR2,000);
- decisions that the losing party has acquiesced to; and
- decisions for which the deadline to appeal has expired.

In general, appeals suspend the effect of a decision. However, there are exceptions when the first instance court's decision is deemed enforceable either by a court order or law.

The appellate court will thoroughly examine the judgment submitted to it, considering both the facts and the law. The appellate court may either uphold the decision of the first instance court or overturn it partially or entirely. In most cases, it is possible to challenge the judgment of the Court of Appeal by lodging a (further) appeal with the Court of Cassation. However, it is important to note that the Court of Cassation's review is limited to assessing whether there has been a violation of legal principles or procedural rules. It does not conduct a comprehensive examination of the factual findings of the lower court.

The duration of proceedings before the Court of Appeal will depend on the workload of the chamber, but typically ranges from 1.5 to 3 years. The duration is generally shorter for appeals before the Court of Cassation.

Interim relief proceedings

The Luxembourg Code of Civil Procedure offers various types of expedited interim relief proceedings. Here, representation by an attorney is not mandatory (as applications for interim relief are disposed of by way of oral proceedings).

The interim relief judge (*juge des référés*) has the authority to issue precautionary, restorative, or expert measures to prevent immediate damage or irreparable loss and to protect the rights of the claimant. Additionally, the interim relief judge may order the payment of a debt when there are no substantial grounds to dispute it. Interim relief applications can be made before or during the main proceedings, but they are usually sought prior to initiating a substantive legal action. Interim relief can be granted *ex parte*, but only in circumstances permitted by law or of extreme necessity and urgency.

The procedure for obtaining interim relief is initiated by serving a writ of summons requiring the defendant to appear at an oral hearing on a scheduled date. Although legal representation is not mandatory, parties are strongly recommended to appoint a lawyer. Depending on the urgency, the interim relief hearing can take place within a short period - ranging from hours to a few months. The judge must

ensure that the defendant has sufficient time between the service of the summons and the hearing to prepare their defense. During the oral hearing, both parties can present their respective positions.

The time taken by the court to grant interim relief varies depending on the urgency of the matter.

To obtain interim measures, applicants must demonstrate either the urgent need for the relief requested or the absence of serious grounds to challenge the applicant's claim. A party affected by the order can appeal against an interim relief order within 15 days of receiving the order. However, an appeal against interim relief will not ordinarily suspend its effect.

Prejudgment attachments and freezing orders

A civil law claim can be preceded by an interim attachment on a debtor's assets through an *ex parte* application made to the President of the relevant District Court. These attachments can be imposed on different types of assets owned by the debtor, including immovable and movable property, bank accounts and shares.

Prejudgment attachments and freezing orders are examples of interlocutory measures that can be sought before, during, or pending final judgment and provide a means of securing the debtor's assets whilst legal proceedings have not been initiated or concluded.

The judge carefully evaluates whether the available evidence *prima facie* supports the alleged creditor's legal action. In interim relief proceedings, the alleged debtor is not heard as the procedure is conducted *ex parte*. Once the judge grants approval, a bailiff is authorized to attach the debtor's assets. The specific procedure for attachment depends on the type of asset involved. Generally, the process is relatively straightforward. The procedure for an attachment on the debtor's assets, held by a third-party, involves two stages:

- The conservatory phase (*phase conservatoire*): The creditor blocks all assets held by the attached third-party on behalf of or owed to the debtor. A writ of attachment is served on the third-party, making the debtor's credit balance and assets unavailable for disposal. The debtor can request a limitation of the attachment's effects through court proceedings ("*cantonnement*"). Regarding the attachment of bank accounts, it is also important to note that there is no mechanism in Luxembourg for allowing a creditor to obtain information on the bank accounts of his debtor. It is therefore useful to know in advance in which bank the debtor might have bank accounts in Luxembourg; and
- The enforcement phase (p*rocedure de validation*): This phase includes the following steps:
  - Within eight days of serving the writ, the debtor is notified of the attachment and is summoned to appear before the court to defend themselves ("*assignation en validation*"); and
  - Within eight days of notification to the debtor, the third-party is notified by a bailiff of the validation action and the regularity of the attachment procedure ("*contre-dénonciation*").

Following these procedural steps, an *inter partes* procedure takes place before the court, involving an exchange of briefs and a scheduled hearing.

It is crucial - once the abovementioned procedural steps have been taken - to bring a separate claim on the merits to obtain a validation judgment. The timeframe to bring a claim on the merits depends on the jurisdiction of the validation judge. If the validation judge also holds jurisdiction over the merits, the civil claim shall be filed concurrently with the validation action. However, if the validation judge lacks jurisdiction to also rule on the merits, the creditor needs to request a stay of proceedings and initiate a civil claim before the appropriate court that has jurisdiction. In this scenario, the civil claim shall be filed within a reasonable timeframe to pre-empt the debtor from challenging the interim attachment.

It is important to note that if the claim is dismissed during the subsequent proceedings on the merits, the creditor may be held liable for any damages caused to the debtor due to the attachment - particularly if there was negligence involved.

Once the validation judgment is issued and served to the third-party, an assignment of the claim is made to the pursuing creditor. The effect is to make the creditor of the debtor also a creditor of the third-party (thereby replacing the defendant), entitling them to recover the sums owed. Now, the creditor is able to request payment of the defendant's sums/assets held by the third-party.

Costs

In Luxembourg, it is important to note that there are no court fees for legal proceedings. However, it is common to incur bailiff fees in most proceedings, although these fees are typically nominal.

Regarding attorney fees, the general rule is that a person who engages an attorney to represent their interests in legal proceedings is responsible for paying the attorney's fees in full. However, there are certain conditions under which the judge may order the unsuccessful party to pay a procedural indemnity to the successful party.

To enable a judge to order a procedural indemnity, the winning party must make their request for such an order explicitly. For a claimant, this request can be made in the document initiating the proceedings (such as a petition or writ of summons); for a defendant, the request may be made during the course of proceedings.

The judge will assess the validity of the request, considering factors such as fairness, the incurred expenses not included in the general costs, and the actions taken by the successful party to avoid litigation. The procedural indemnity, which is at the judge's discretion, typically covers a portion of the lawyer's fees and other related costs (ranging from EUR500 to EUR5,000).

Additionally, a successful claimant can recover the costs directly associated with initiating the proceedings, such as bailiff's fees and translation costs, from the defendant – so long as the defendant is solvent. It is not necessary to make a specific request for these fees, but the judge must explicitly specify the party responsible for bearing these costs.

Class actions

While class actions are not currently established in Luxembourg within a defined legal framework, progress is being made towards their introduction. Bill of Law 7650, submitted to the Luxembourg Parliament, aims to introduce collective recourse procedures in consumer law, aligning with the EU's Consumer Rights Directive.

However, under the existing procedural rules in Luxembourg, a claimant is generally only allowed to sue for their own personal benefit to recover their individual losses. Nevertheless, there have been some court decisions recognizing certain legal entities' ability to bring claims on behalf of their members. For instance, the District Court of Luxembourg ruled in 2005 that a legal entity may sue for damages on behalf of its members if its constitutional documents explicitly authorize the entity to defend the interests of some or all its members in court proceedings. Similarly, in a 2007 judgment, the Court of Appeal confirmed the right of unions to protect the interests of their members through legal actions. In addition, certain limited organizations, particularly those focused on consumer protection, animal rights, and environmental protection, are permitted by law to bring damages claims in criminal proceedings when collective interests are at stake. While some organizations have standing to bring legal claims in the general public interest, their ability to effectively represent multiple victims remains quite limited. In the absence of a consistent body of case law or approval from the Court of Cassation, and until the Bill of Law 7650 on class actions is adopted by the Luxembourg Parliament, it is fair to say that class actions are generally unavailable under Luxembourg law.

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Kuwait

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Overview of court system

The Kuwaiti legal system is a civil law jurisdiction that is a blend of French civil law, Islamic legal principles and Egyptian law. The Kuwaiti legal and regulatory framework is not as developed as Western legal systems. The applicable legal and regulatory principles are dynamic and subject to frequent changes in application and interpretation. This means that it is often necessary to liaise with the relevant government authorities in order to seek their confirmation on the application of the law in relation to particular business activities. In addition to obtaining confirmation of the current legislative and regulatory framework, an understanding of the current policies and interpretations in force and the practical approach to the resolution of these matters is important.

There are further difficulties in advising on the interpretation of applicable laws and regulations in Kuwait because the procedure for reporting legislation and court decisions is usually confidential and, when made public, the system for reporting decisions is not as developed as other jurisdictions. In addition, as Kuwait is a civil law jurisdiction, there is no binding system of judicial precedent as there is in common law jurisdictions.

The Kuwaiti courts have a three-tiered structure, comprised of:

- General Courts; (Courts of First Instance);
- Courts of Appeal; and
- the Court of Cassation.

Limitation

Limitation periods in Kuwait vary depending on the cause of action, but the general limitation period for civil legal claims is 15 years.

Procedural steps and timing

The first point to note is that all documents must be submitted in Arabic. Further, it may be necessary for documents that are being translated to be officially translated through the courts.

The procedures for initiating a civil or a commercial claim are essentially the same. Generally, court actions are initiated in Kuwait by the plaintiff. Legal representation is not mandatory in civil cases. However, if a party choses to be represented by counsel in civil proceedings, the legal representative must be a Kuwait qualified lawyer. A claim is initiated by submitting a statement of claim (with supporting documents) to the court clerk for the relevant court. The court clerk is required to maintain a copy and to refer the original to the Clerks Department to effect service on the defendant(s) usually between five to ten days depending upon the nature of the court circuit the claim is entertained by. After the statement of claim is properly served on the defendant, the defendant will have to respond with a statement of defense (which may include jurisdictional objections, procedural and substantive defenses, whether in the form of denials or of affirmative defenses or counter claims) with any applicable supporting evidence. The statement of defense must be filed before the date of hearing annotated on the service document.

If there are factual issues in dispute, either party may apply to the court to appoint an expert to test that evidence (or if it deems it appropriate the court itself will appoint an expert). Only if satisfied of the need for an expert will the court agree to such a request. The Ministry of Justice has a panel of experts in various fields which assist the court in cases which involve technical, factual or financial matters. The Ministry has a right to assign the external experts to test evidence. Usually, such experts are professors from Kuwait University.

A single expert or panel of experts may be assigned to a case, depending on the size of the claim and/or the complexity of the case. The designated expert(s) meets with the parties in an inquisitorial manner, and they are required to make a series of submissions and to produce evidence in support of their submissions, before the expert then provides a report to the court. It is wholly at the court's discretion whether to accept the expert report. Generally the court will then issue a decision with facts based on those provided in the expert's report. The court's decision may be appealed to the Court of Appeal, which in turn may also refer the case to the Experts' Department for fact finding. Upon the issuance of the Court of Appeal's judgment, only points of law can be appealed to the Court of Cassation (Kuwait's highest court).

While it is not possible to anticipate the duration of proceedings with any degree of certainty, it is commonplace for complex commercial disputes (such as those relating to engineering and construction) to take two or three years in the lower courts before final judgment. If an appeal is made to the Court of Appeal, an appellant may wait up to a year for a judgment to be handed down and if that judgment is further appealed to the Court of Cassation, this final review may be pending for a further two years. This makes it not uncommon for commercial legal proceedings in Kuwait to span six or seven years.

Disclosure and discovery

Generally, discovery is not part of the civil procedure in civil law jurisdictions including Kuwait. Therefore, if a party requests general discovery, the request is unlikely to be granted by the judge or, any discovery will be conducted in a cursory fashion. As such, there is no principle of full disclosure in Kuwait and the parties may substantiate their claims with evidence they choose to use.

However, it is possible for a party to request the judge to order (or the court on its own volition may order) the opposing party to submit certain specified documents or to produce evidence. The submission of documents can only be requested during legal proceedings. The procedure, if ordered by the court, is expressly not meant to facilitate fishing expeditions. The party requesting the submission should have a legitimate interest and the request should cover a narrowly defined group of documents.

Furthermore, the court can, at its own discretion, give an interim judgment asking a party to submit certain additional evidence which the court considers essential to the case.

Default judgment

In the event that the defendant does not appear at the initial hearing or seeks more time to arrange for legal representation, the court will adjourn the hearing for a period of one to three weeks. The courts will not typically order an adjournment more than once for the same reason. Therefore, if a defendant fails to attend hearing dates on multiple occasions without good reason, the court will assess the merits of the claim and either dismiss the claim or render a judgment by default. A default judgment may be appealed causing the matter to be re-examined by the Court of Appeal. The timeframe for appealing default judgments is 30 days for civil claims and 15 days for summary and rental courts.

Appeals

The General Courts, the lowest tier of the structure, are trial courts divided into circuits with specialized subject matter jurisdiction. The Court of Appeal hears appeals from decisions of the General Courts (subject to meeting minimum value considerations). In most cases the scope of its review will be limited to the particular issues being appealed from the General Courts. However, the Court of Appeal is empowered to conduct a *de novo* trial, addressing again all the factual and legal issues. The Court of Cassation only determines points of law. It has final jurisdiction covering matters relating to the proper application, interpretation, and enforcement of law, and rectifies only legal procedural and legal substantive defects committed by the inferior courts. As such, it typically deals with questions of law, rather than considering the merits of a case.

A party has 30 days from the date of the first decision of the General Courts to appeal to the Court of Appeal. The timeframe for the Court of Appeal to resolve appeals is usually anytime between six months to one year, depending upon the nature and complexity of the case. Judgments handed down by the Court of Appeal are final unless the case is taken to (and accepted by) the Court of Cassation. Again, a

party has 30 days from the date of an appellate decision to appeal to the Court of Cassation. First, a council chamber will have to entertain the matter if it accepts that the case will be heard by the Court of Cassation. If rejected, the appeal is deemed declined. It will usually take two years for a judgment to be given following this appeal.

Interim relief proceedings

Interim and / or precautionary measures are equitable remedies that are at the discretion of a Kuwaiti court and may not be available in all circumstances, in particular, where damages are considered an adequate remedy. In limited circumstances, Kuwaiti courts may grant interim relief which is akin to a form of injunctive relief. For example, the courts may issue a temporary and precautionary attachment order over assets (for further detail see Prejudgment attachments and freezing orders), issue travel bans and grant freezing orders to prevent a party from dissipating or removing its assets from the jurisdiction. However, Kuwaiti courts will not issue prohibitory injunctions, such as anti-suit injunctions, as these are not recognized legal concepts in Kuwait. The most common matters for which interim relief applications are sought include seeking stay on the execution of the court of appeal judgment, or for the determination of facts, for example stopping construction until determination of true ownership, etc.

To obtain injunctive relief, an applicant will have to submit a petition requesting injunctive relief at any stage of the matter depending upon the circumstances, but usually it is in the beginning of the case. Representation by an attorney is not mandatory. The judge of the Provisional or Interim Proceedings Court should rule on the petition within a week. If necessary, the judge is able to demand that the parties appear before the court within 24 hours of the submission of the petition. In order to grant relief the judge must be satisfied that the remedy being sought by the petitioner is in fact of a provisional nature, or that the remedy sought may be irreversibly lost unless the court intervenes urgently. The judge will not grant relief where the petitioner seeks a substantive review of the matter.

Provisional orders granted by way of interim relief may be appealed to the Court of First Instance within 15 days of issuance. If there are already related proceedings pending before a court, the appeal must be taken to that court.

Prejudgment attachments and freezing orders

A plaintiff may seek a prejudgment attachment by seeking an order of the Court of Urgent Affairs, to obtain and maintain an attachment over a party's assets before the commencement of the hearings. Conservatory attachments can be made only to movable assets and can be on third parties. The procedure is *ex parte*, and a prejudgment attachment must always be followed by a claim on the merits, which should be brought within eight days after attaching the assets.

A protective attachment may be obtained and maintained in the following circumstances:

- the claimed amount is ascertainable and immediately payable;
- the plaintiff could suffer irreversible damage without the attachment; and
- if the plaintiff has not already done so, substantive action is commenced within eight days of the issuance of the attachment order.

Upon the grant of such interim relief, the judge issues an execution order. This order is passed to the Execution Department at the Ministry of Justice, which implements the enforcement of such relief.

The creditor can be liable for damages caused to the debtor by the attachment (if *mala fide*). The court will examine the intentions of the plaintiff, because the right to take legal action is a constitutional right.

Costs

The costs of litigation in Kuwait can be divided into court fees and legal fees. Court fees are usually in proportion to the amount claimed. In some cases these fees are fixed (generally employment matters or if no particular sum is claimed) and in others, they are levied at 2.5% of the first KWD10,000 plus 1% of any amount claimed above KWD10,000.

The party against whom a judgment is given will usually be required to reimburse the opposing party's legal fees and pay the court fees. However, the amount of the legal fees awarded is at the sole discretion of the judge. In practice, such amount is nominal and does not reflect the actual legal costs or expenses. The fees granted by the judge will cover the fees paid to the court as well as lawyer fees, which range from KWD50 to KWD500.

Class actions

In Kuwait, there is no concept of class action suits where one person may commence proceedings as a representative of numerous other persons; however, the civil procedures law of Kuwait does recognize the concept of a party joinder. Any person may join an ongoing litigation if that person has an interest that is relevant or related to the case. A joinder can be made either in accordance with the regular procedures for filing a claim before the hearing or by oral request to the judge during the hearing. Further, the judge has the discretion to join a party to a case if the judge determines it is just or necessary.

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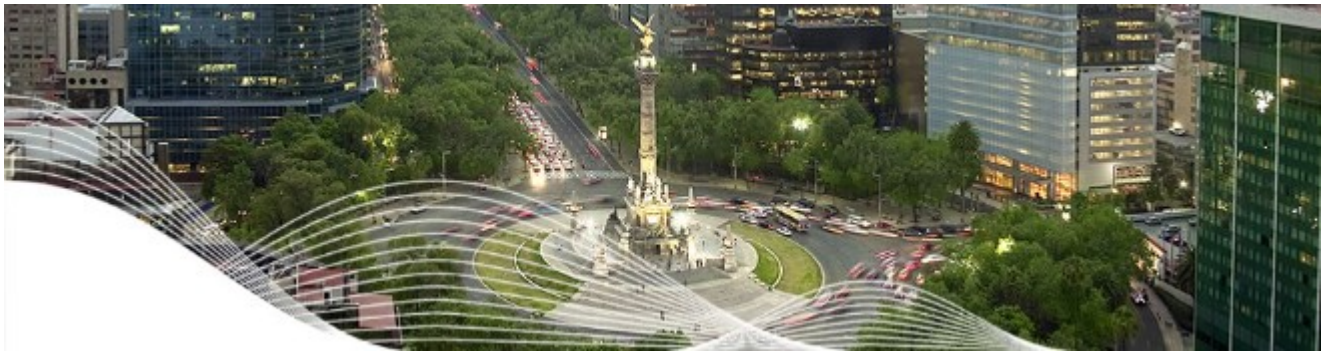

Mexico

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Overview of court system

Mexico has a civil law system. There are federal laws and local laws for each of the 32 states. Federal laws apply to all states, while local laws apply only to the state in which they are enacted. Courts are divided into federal and state courts:

- the Federal judicial system includes:
  - Supreme Court
  - Electoral Court
  - Regional plenaries
  - Collegiate Circuit Courts
  - Collegiate Appeal Courts
  - District Courts
  - Federal Judiciary Council
- the State (i.e. local) judicial system *generally* includes:
  - Civil Courts
  - Family Courts
  - Oral Trial Courts
  - Human Rights Protection Courts[1]
  - Courts of Appeal

A contractual choice of jurisdiction in favor of a foreign court will be recognized by the Mexican courts, except where statute mandates the matter be heard in the courts of Mexico.

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[1]Some jurisdictions only

Limitation

Under Mexican law, as a general rule, statute of limitations for civil claims is ten years from the date an obligation may be enforced. For damages, statute of limitation is limited to two years.

Procedural steps and timing

The litigation process is very similar in both state and federal courts. Representation by an attorney is not mandatory, although it is recommended; lawsuits may be filed directly by the plaintiff. A lawsuit is commenced (the preliminary stage) when the plaintiff files a complaint before the court. Subsequently, the defendant is summoned to appear in court. The defendant then has a limited period set by law to file a defense and, if necessary, a counterclaim.

The next phase is the evidentiary phase, and once the parties have been notified of the commencement of this phase, they have a limited period set by law to submit evidence. The court has wide discretion to admit or refuse the evidence submitted by the parties. If the court admits, the evidence must be presented by the parties. Courts have full authority to request evidence *ex officio* if it is considered essential to resolve the case.

The third phase is the final phase, in which the parties present their written closing arguments.

At the end of the pleading period, the judge summons the parties to the hearing and issuance of the final judgment within the law stated period.

The length of the trial can vary depending on the complexity of the case, the workload, and the agility from state to state. A simple civil case may take two to three years, including second instance and constitutional remedies.

Disclosure and discovery

Mexico does not provide for discovery in the same manner as common law jurisdictions. Evidence production operates on the principle that each party is responsible for the presentation and procurement of its evidence.

However, the judge may take evidence from any person, whether is a formal party or a third party, and has authority to request any document for resolving the case, whether belonging to the parties or to a third party, without any limitation other than that the evidence must be legally admissible and directly related to the facts in dispute.

The judge may also repeat or extend the evidentiary phase, as he/she deems necessary.

Default judgment

If, after being summoned, the defendant fails to appear and thus fails to participate in the proceedings, the trial will continue without the presence of the defendant (*juicio en rebeldia*). The party who did not appear during the proceedings has the right to challenge this decision.

Appeals

Depending on the nature of the proceedings, parties may file appeals to challenge procedural decisions or final judgments.

The appeal must be filed in writing before the court of first instance, which then refers the case to the court of appeal.

Interim relief proceedings

Precautionary measures necessary to preserve the *status quo* may be granted by the courts prior or during the trial. Such measures shall be ordered without hearing the opposing party and shall not be subject to appeal. An appeal may be lodged against an order refusing such measures.

Prejudgment attachments and freezing orders

Precautionary measures (*providencias precautorias*) are applicable also in commercial litigations when:

- When there is a well-founded fear that the person against whom an action is to be or has been brought is absent or concealed.
- Seizure of assets in the following cases:
    - when there is a well-founded fear that the assets pledged as security or in respect of which a real action is to be brought have been disposed of, concealed, dilapidated, disposed of or are insufficient, and

- in the case of personal actions, provided that the person against whom the application is made has no assets other than those on which the action is to be brought and there is a well-founded fear that he will sell, conceal, dilapidate, or dispose of them.

Costs

The Mexican Constitution provides that all *courts must administer* justice free of charge.

However, the main costs of litigation in Mexico include (i) attorneys' fees; (ii) translation fees; and (iii) day-to-day administrative costs.

Courts are also entitled to award legal fees on litigators who have acted in bad faith, falsely or illegally, the purpose of which is to reimburse the opposing party for the costs and legal fees during the litigation, which is analyzed on a case-by-case basis.

Class actions

Class actions are recognized by the Mexican Constitution as collective actions. The federal courts have exclusive jurisdiction over these proceedings. The class action is appropriate for the protection of claims whose ownership corresponds to a collective of persons, as well as for the exercise of individual claims whose ownership corresponds to the members of a group of persons.

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Netherlands

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Overview of court system

The Netherlands is a civil law jurisdiction. Dutch courts operate under the Dutch Civil Code and the Dutch Code of Civil Procedure. Dutch courts primarily look at the codified principles and rules, although precedents are often used in court to strengthen a case. The principal sources of law in the Netherlands include:

- The Constitution of the Netherlands, which forms the basis for legislation and provides the framework for the organisation of the Dutch state;
- Codified laws;
- Case law: serve as a guidance only, the decisions of the Supreme Court of Justice are particularly persuasive on itself and on lower courts;
- Acts of Parliament, treaties; and
- Some decisions of international law organisations.

Judiciary System in the Netherlands

Judicial authorities are organized into:

- 11 district courts;
- 4 courts of appeal; and
- the Supreme Court.

The district court comprises five sectors, which always include the administrative sector, civil sector, criminal sector and a sub-district sector. Each district court has a limited jurisdictional sector (i.e the Cantonal Courts). This division covers rental disputes, labour law and monetary claims up to EUR25,000. The civil division of the relevant district court deals with all other commercial disputes.

In principle, litigation is conducted in Dutch. However, with the launch of the Netherlands Commercial Court ("NCC") in 2019, parties can choose to commence litigation in English as well. The NCC is seated in Amsterdam and focuses on complex international commercial disputes. It offers experienced judges, delivers reliable judgments and a fast resolution of disputes. With the launch of the NCC, the Dutch judiciary aims to provide a quicker and less expensive alternative to arbitration and enable international parties to litigate in English.

Most cases in the civil sector are decided by a single judge. However, more complex cases can bring forth a full-bench panel with three judges.

If a party disagrees with the district court judgment, the case may be appealed at a court of appeal and subsequently at the Supreme Court, which is the highest court in the Netherlands. Thereafter, only the European Court of Justice is capable of overturning a Dutch ruling.

Only matters of broader relevance for society are dealt with by the Supreme Court. The facts of the case as established by the lower courts will not be subject to discussion by the Court, it mainly examines whether the law has been applied correctly and procedures properly followed by the lower courts. Supreme Court rulings serve as a strict guideline to the lower courts.

Limitation

The general limitation period for civil claims is three to five years, depending on the nature of the claim concerned.

In principle, a claim for specific performance becomes time barred 5 years after the claim became due and payable. A claim for compensation or to pay a penalty generally expires 5 years after the day the injured party becomes aware of:

- the damages incurred (or that the claimant could demand a penalty); and
- the identity of the liable party.

In any case, a claim expires after a period of 20 years, unless the law prescribes as otherwise.

A failure to commence proceedings before the relevant time period expires will result in that claim being null and void and therefore dismissed. The defendant should raise this defence.

Limitation periods can be interrupted in most cases. Interruption can take place by:

- an act of prosecution (bringing a claim by means of a summons or petition);
- a written demand or notice to that end; or
- acknowledgement of the claim by the debtor.

Following the interruption, a new limitation period will begin.

Procedural steps and timing

An ordinary civil lawsuit in the Netherlands is initiated with a writ of summons. Most civil cases start in one of the district courts. The domicile of the defendant usually determines the district court that will deal with the claim. In the district courts, it is mandatory for the representative attorney to have been admitted by the Dutch Bar.

The writ contains the claim as well as its substantiation. The writ needs to be served on the defendant by a bailiff, and this process may take a few days. At the court date mentioned in the writ, the writ needs to be submitted to the court, along with evidence in the form of documents. The defendant is then granted a period of six weeks for filing its statement of defence. Following this, an oral court hearing is usually scheduled. The timing for the entire procedure is heavily dependent on the court's availability. However, in a straightforward civil lawsuit, the time from serving the writ until obtaining a judgment will usually be 12 to 18 months.

The proceedings can, of course, be of complex nature and timeframes for each stage of the proceedings vary greatly depending on the complexity of the case. A claim for damages, witness or expert hearings and requests for the submission of documents are examples of complications that may cause proceedings to take longer. Parties have much influence on the practical course of the proceedings. At any stage of the proceedings, they may request extensions for submissions and can suspend the proceedings (for example to create some time to settle the matter). In case of the latter, the court will put the matter on its docket until further notice.

Disclosure and discovery

Although parties must substantiate their statement with evidence, they are generally free to determine what evidence they want to rely on. However, a court may order a party to submit certain additional evidence. Refusing to provide this additional evidence could impact a party's position, as the court may draw adverse inferences from the party's refusal.

Further, it is possible to request for certain documents to be submitted. The submission of documents can be requested prior to or during legal proceedings. The procedure is not meant to facilitate fishing expeditions. The party requesting the submission should have a legitimate interest and the request should cover sufficiently specified documents. Furthermore, the requested documents must relate to a legal relationship to which the applicant is a party. The request is not limited to hard copy documents; it can also pertain to any (electronic) documents held on electronic devices. After hearing the counterparty, the district court will decide on the request. Legal professional

privilege applies to communications from and between attorneys and certain other professionals. Parties cannot usually be required to disclose privileged documents.

Default judgment

In principle, a default judgment will be awarded if a defendant does not appear in proceedings (i.e. it fails to bring forward an attorney representing it or it does not file a defence on time), or if the claim appears to be without any legal basis prima facie.

A defendant confronted with a default judgment has the option to object. The objection must generally be filed within four weeks and with the court that has delivered the default judgment. This objection does not count as an appeal but is rather a continuation of the procedure in first instance.

Appeals

The period for lodging an appeal at an appellate court is usually three months after, the district court rendered its judgment. An appeal suspends the effect of the judgment in the first instance, unless the appealed judgment has been explicitly declared enforceable with "immediate effect" (i.e. regardless of a potential appeal).

Appeals against judgments of the district courts will be dealt with at one of the four high courts of appeal. The court of appeal will re-examine the matter as a whole – including all facts and the merits of the case – and reaches its own conclusion. A hearing is likely to be held within a year after an appeal has been initiated. An appeal judgment is likely to be given within a year from the hearing for the appeal has been held.

In most cases, it is possible to contest the court of appeal's judgment by appealing to the Supreme Court. The Supreme Court only assesses whether the law has been applied correctly and whether procedural rules were followed. Thus, the Supreme Court will not conduct a new factual assessment of the case. The proceedings are fully in written (i.e. no hearing) and a Supreme Court judgment cannot be appealed.

Interim relief proceedings

The Netherlands has a quick, informal procedure for obtaining an interim relief judgment. Before the court decides on the main proceedings, by seeking interim relief, claimants are able to request the judge to impose interim relief on a short-term basis in cases of urgency. Interim relief measures are often aimed at: (i) requiring parties to promptly perform certain acts; or (ii) prohibiting parties from carrying out certain acts. Common examples are the request to suspend a contested decision with immediate effect until appeal proceedings on the main issue have concluded, and the request to immediately lift (prejudgment) attachments on certain goods and/or bank accounts.

Interim relief can be sought before and during the (main) proceedings, as well as after a judgment has been rendered in the main proceedings. However, an interim relief judge must align his judgment with the (probable) judgment in the main proceedings.

Interim relief proceedings start with obtaining a date for the hearing with the interim relief judge. Usually, a hearing takes place within one to three weeks, although much shorter time frames are possible in urgent cases (even within a matter of hours). A writ of summons needs to be served by a bailiff, who is allowed one week to serve, although this time frame can also be reduced by the interim relief judge. At the oral hearing, both parties can elaborate on their position. For the defendant, representation by an attorney is optional, but for the claimant it is mandatory. After the hearing, the interim relief judge will usually issue the interim relief judgment within a week, though this could also be done faster when immediate action is required. Appealing against an interim relief judgment is possible within four weeks.

The judge in interim relief proceedings does not examine the underlying claim in detail. When the request for interim relief relates to a claim that appears to be complex, the judge will be unlikely to allow the request for interim relief to proceed. Likewise, the interim relief judge will only allow requests for interim relief when claimants demonstrate that they have an urgent interest that requires prompt intervention. In other words, requests for interim relief in respect of claims that are not urgent or too complex will be rejected and the claimant will be ordered to initiate (main) proceedings in the ordinary way.

Decisions granting interim relief will be provisional in nature, which means that a court decision in interim relief proceedings will not prejudice the rights of parties in ordinary civil proceedings that are pending at the time of the interim relief judgment or that might be initiated thereafter. In practice, however, an injunction or provisional measure can (and may, according to case law of the Dutch Supreme Court) have irreversible consequences, which can only be redressed on appeal. For example, at the request of the claimant, the judge may

stipulate in his order that the defendant shall forfeit a penalty for each day that the defendant fails to comply with the measure ordered or injunction, or for each day that the defendant acts in contravention of the decision. If the judgment in the ordinary proceedings is rendered in favor of the payer, the payer's only option to reverse the situation would be to appeal the interim relief measure itself, as the forfeited penalties are not automatically reversed.

Notwithstanding their interim character, interim relief proceedings are not always followed by ordinary civil proceedings. Parties are not obliged to commence the main proceedings; they often accept the interim relief judgment itself and refrain from engaging in further proceedings.

Prejudgment attachments and freezing orders

Ordinary civil proceedings (including interim relief proceedings), may be preceded by a prejudgment attachment, which is a measure used to obtain security for the recovery of a claim. Although a prejudgment attachment may be provisional in nature, the procedure for obtaining it is distinct from interim relief proceedings.

The request to attach or freeze assets of the debtor should include details of the underlying principal claim and its supporting evidence, as well as a clear description of the assets a party wishes to attach. Immoveable and moveable assets (such as real estate, cars, art objects, boats and inventory), claims (including claims on banks i.e. the alleged debtor's bank accounts) and shares can all be attached in the Netherlands.

The judge assesses whether the evidence supports the alleged creditor's course of action prima facie. The procedure is *ex parte*, so the interim relief judge will not hear the alleged debtor. After obtaining leave from the judge, a bailiff can attach the assets. The procedure for this depends on the type of asset. In general, it is relatively easy, and if an urgent interest is deemed to exist (for example if a reasonable fear of embezzlement exists) judges might even grant approval the same day so that the creditor can freeze the assets right away.

In contrast to interim relief proceedings, a prejudgment attachment must always be followed by a civil claim on the merits, which can be filed in the Netherlands or anywhere else. The claim must usually be initiated within two weeks after attaching the assets. However, in complex or international cases the judge might set a longer term. The claim is considered "initiated" by serving the writ of summons. If the claim is not brought within the stipulated term, the attachments are lifted by operation of law. If this happens, or if the claim is dismissed in the proceedings on the merits, the creditor might be liable for any damages caused to the debtor by the attachment(s).

Apart from the regular Dutch law system, which provides for many options to freeze any debtor's assets in the Netherlands, Dutch courts and bailiffs are well-experienced with European Bank Account Preservation orders. Therefore, the Dutch law system provides for a straight-forward procedure for creditors to obtain approval from the Dutch courts to freeze bank accounts in other European countries too, and the other way around.

Costs

The costs of litigation in the Netherlands can be divided into court fees, bailiff fees and legal fees.

The court fees depend on:

(i) the claimed amount; and

(ii) the capacity of parties.

- At the district courts, court fees range between EUR86 (for persons of limited means) and EUR8,519 (for corporate entities in claims over EUR1,000,000).
- Court fees are higher at courts of appeal, ranging between EUR343 and EUR11,379.
- At the Supreme Court, the court fees range between EUR355 and EUR14,229. Bailiff fees vary between EUR80 and EUR500.

Apart from the "regular" court system, in the Netherlands parties can decide to litigate in front of the Netherlands Commercial Court ("NCC") The court fees at the NCC in the first instance are around EUR16,000.

The unsuccessful party will usually be ordered to reimburse the opposite party's court fees. Furthermore, a fixed amount will be awarded as a reimbursement for legal fees. This amount depends on the number of procedural acts involved and is usually only a fraction of the actual legal fees (amounts between EUR500 for straightforward proceedings and EUR15,000 are common). Only in intellectual property

proceedings the actual legal fees of the successful party must be reimbursed by the unsuccessful party.

Class actions

Dutch law has permitted collective action proceedings for about 30 years. In 2020, the Dutch collective action regime was rigorously modernized with the introduction of the WAMCA (Wet Afwikkeling Massaschade in Collectieve Actie). The WAMCA only applies to collective actions initiated after 1 January 2020 and that relate to an event or a series of events that occurred on or after 15 November 2016. This cut has been applied strictly by courts in several cases.

Contrary to the EU Representative Actions Directive, which only applies to infringements of EU consumer law, Dutch law does not pose any limitations on the types of claims that may be brought on a collective basis. For a collective action to be admitted, the courts will however assess whether:

- litigation through a collective action is more efficient and effective than individual proceedings;
- the factual and legal questions are sufficiently similar; and
- the represented group and their financial interests (if any) are sufficiently large.

Hence, there should be a collective element in any claim brought in a collective action.

The Netherlands does not have specialised courts for collective actions or collective redress proceedings; these are brought before the regular civil courts considering ordinary rules of jurisdiction and competence. Collective actions or collective redress proceedings are not limited to a particular type of conduct or cause of action. They can have both contractual and non-contractual bases.

The claiming entity should be a Dutch foundation (stichting), a Dutch association (vereniging) or an entity designated as a 'qualified entity' in another EU Member State. If more than one interest group wants to bring a class action regarding the same facts of the case, the court will appoint one of the interest groups as the exclusive advocate.

The interest group must have a supervisory body, an appropriate mechanism for decision-making by the individuals whose interests it represents, sufficient financial resources for the costs of the collective action, and sufficient experience and expertise for the collective action.

Collective actions brought under the new WAMCA regime bind any Dutch-domiciled member of the represented group, unless they actively opt-out. Non-Dutch-domiciled members of the represented group are only bound by the action if they actively opt-in.

Prior to initiating a collective action, the claiming entity should first try to settle the matter amicably. Observing a two-week period to allow for settlement negotiations suffices in any case. To initiate the collective action, the claiming entity should serve the writ of summons on the defendant(s) and register that writ in the public collective action register.

The rules regarding appeal in civil procedures are applicable for class action lawsuits as well. However, the WAMCA excludes the option to appeal in two specific situations:

- There is no possibility to appeal the court's decision in appointing an exclusive advocate; and
- If a court refuses to approve a settlement agreement, this can only be appealed in cassation jointly by the parties.

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New Zealand

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Overview of court system

New Zealand's courts operate under the common law legal system. Generally speaking, case law interprets Parliament's legislation, but cannot change or overrule it. Parliament will from time to time pass statutes that codify existing case law and may change the previous position.

The New Zealand court system has various levels of first instance and appeal courts, including:

- 58 District Courts
- 19 High Courts
- One Court of Appeal
- One Supreme Court

The Supreme Court is the highest court in New Zealand. Most commercial cases start in the High Court, and can then be appealed to the Court of Appeal and or possibly the Supreme Court. Lower courts are bound by the decisions of higher courts.

There are also specialist courts, including the Employment Court, the Environment Court and the Family Court, and some specialist tribunals.

It's not possible to litigate in languages other than the official languages of New Zealand. English is most common, but Te Reo Mori can also be spoken in court. Furthermore, evidence can be provided in a foreign language, which will then be translated and interpreted. Judgments will not be given in a foreign language.

Limitation

Limitation is governed in New Zealand by the Limitation Act 2010. This imposes a time period before the end of which proceedings must be commenced for a claim or dispute. A failure to issue proceedings before the relevant time period expires is a defence to the claim and, if such defence is used, will result in that claim becoming “time barred”.

In general, most claims must be brought within six years of the date of the act or omission on which the claim is based unless the “late notice” provisions apply. If the claimant did not know about the act or omission at the time, they have “late knowledge”, and the limitation period expires three years after the claimant knew (or ought to have known) that a claim had arisen. The Limitation Act 2010 also provides for a longstop date of 15 years after the date of the act or omission on which the claim is based, after which a claim cannot be brought.

There are also a small number of specific limitation periods set out in specific Acts of Parliament.

Procedural steps and timing

Proceedings are initiated by either a claimant filing a statement of claim or an applicant filing an application in the relevant court. The

claimant or applicant must then serve the statement of claim or application on all parties to the proceedings. Parties will then exchange further "pleadings" (such as defences, counterclaims, and replies) which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party and determined by the court. A statement of defence must be filed within 25 working days, but this period can be extended by the court. The timeframe for litigation will depend on the type of claim and several other factors. This is usually discussed at the first case management conference, which typically occurs after a statement of defence and any reply has been filed.

For standard civil proceedings, initial disclosure of principal documents must be provided at the same time as a statement of claim or statement of defence is filed. Once the exchange of pleadings is complete, parties will generally undertake the discovery (also known as the disclosure) process, and then go on to prepare their evidence for a final hearing of the dispute.

Case management conferences are held at regular intervals throughout the process to address procedural issues as they arise and manage the conduct and timeframes of the case up until its final hearing.

A company must be represented in court by a lawyer and cannot represent itself. Individuals may appear on their own behalf without a lawyer if they choose to do so.

Disclosure and discovery

In New Zealand, each party to civil litigation will have to provide discovery to the other parties. The High Court Rules impose an obligation on the parties to co-operate to ensure that the process of discovery and inspection is proportionate to the subject matter of the proceeding and, where possible, practical arrangements are adopted to reduce the scope and burden of discovery.

A statement of claim or statement of defence must be served together with initial disclosure, which must contain all the documents referred to in the pleading and any additional principal documents relied on to prepare the pleading.

After the exchange of pleadings, the parties must then go through the discovery process. Discovery orders must be discussed at the first case management conference.

There are two types of discovery orders available:

- standard discovery; or
- tailored discovery.

Standard discovery requires each party to disclose the documents that are or have been in that party's control and that are relied on or either support or adversely affect that party's own case or any other party's case. Tailored discovery is generally ordered where the parties agree to a smaller scope of discovery than standard discovery by agreeing to limited categories of documents to be discovered. Parties are encouraged by the court to agree on tailored discovery orders.

In limited circumstances, discovery may be ordered prior to the commencement of proceedings if a party can satisfy the court that they need to obtain discovery to find out whether a cause of action exists against a potential defendant. An application for discovery before proceedings have commenced must be made on notice.

Discovery can also be ordered against third parties that are believed to hold relevant documents, but the party applying for that discovery order must bear the reasonable costs of the third party in complying with the discovery order.

The discovery process involves the exchange of affidavits of documents that list the documents to be discovered in various sections and in accordance with the court’s electronic discovery protocol. Privileged documents must be listed but can be withheld from inspection.

Default judgment

A claimant can apply for default judgment in proceedings in any court where a defendant either does not file a defence within the specified timeframe after a statement of claim has been served or fails to make an appearance at a hearing. In relation to claims for a liquidated sum (an amount that has been quantified in, or can be precisely calculated on the basis of, a contract that the claimant relies on), a claimant may request that judgment be sealed. In relation to other types of claims, a judge will consider the claim at a formal proof hearing, in which case the claimant must file evidence establishing to the judge's satisfaction each cause of action and, if damages are sought, sufficient information for the judge to calculate the damages.

A default judgment must be requested. The court won't issue a default judgment on its own initiative.

Once a default judgment is ordered against a defendant, a defendant can, in limited circumstances, seek to challenge it. The defendant will need to file an application to set aside the default judgment within a specified period of time and show cause for why the judgment should be set aside (usually lack of notice of the claim or that notice was given of intent to defend but that notice was not brought to the attention of the court which granted the default judgment).

Appeals

Judgments of the District Court can be appealed to the High Court, and first instance judgments of the High Court can be appealed to the Court of Appeal. A judgment of the High Court on appeal from the District Court can only be appealed to the Court of Appeal with leave of either the High Court or the Court of Appeal.

The extent to which an appeal court will reconsider a case on merits/facts will depend on the nature of the case and the points of appeal. In many situations, a party can only appeal on a question of law. If the right to appeal isn't limited to questions of law, an appeal court generally won't change findings of fact made by the lower court. This applies equally to the Supreme Court.

Leave may also be required to appeal an interlocutory decision. All appeals to the Supreme Court require an application for leave to appeal first.

The various court rules prescribe the appeal period, which is generally 20 working days from the date of judgment.

Neither an application for leave to appeal nor the granting of leave operates as a stay of the relevant proceeding or as a stay of execution of the relevant decision. However, either the original court or the appeal court may, on application, order such a stay.

Generally, appeals will be determined on the evidence presented to the original court and no new evidence can be introduced. Some appeals may be limited to questions of law only. Because of the limitation on introducing new evidence in most civil appeals, appeals will generally be resolved more quickly than matters at first instance. The appeal court will generally not hear from any witnesses.

Interim relief proceedings

A range of interim remedies is available. Interim remedies are provisional measures generally granted to preserve the status quo or prevent the dissipation of assets. Common applications for interim remedies include:

- interim declarations;
- interim injunctions (injunctions are orders prohibiting a person from doing something or requiring a person to do something);
- orders for the detention, custody, preservation, inspection, and sampling of relevant property;
- sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly;
- freezing injunctions;
- search orders;
- orders to provide information about assets;
- injunctions restraining foreign legal proceedings;
- applications for security for costs;
- applications for orders for interim payment on account of any damages, debt or other sum the court may hold the defendant liable to pay;
- applications for further information;
- extensions of time; and
- specific disclosure.

An order for an interim remedy may be made at any time, including before proceedings are started and after judgment has been given. However, the court may only grant an interim remedy before proceedings are started if the matter is urgent or it is otherwise desirable to

do so in the interests of justice.

As a general rule, no order should be made in civil proceedings without notice to the other side unless there are good reasons for doing so. An application for interim relief must be supported by affidavit evidence.

In *ex parte* (i.e. without notice) applications, relief can generally be obtained within a matter of days. If the court grants the *ex parte* application, the defendant is provided with an opportunity to object to the granting of relief at a subsequent hearing. At this hearing, the defendant would seek to persuade the court that any order made should not be continued.

The criteria for obtaining relief varies depending on the type of relief sought but the overarching principles that the court will consider in relation to interim injunctions include:

- whether there is a serious issue to be tried (the evidence must show that the applying party has a real prospect of succeeding in their claim) and, if so:
  - whether, if the applying party were to be successful at trial, damages would be an adequate remedy; and
  - whether, if the responding party were to be successful at trial, damages under a cross-undertaking to pay damages by the applying party in return for an interim injunction would be an adequate remedy,
- if there is a question as to the adequacy of damages to either or both parties, whether it would be just and reasonable to grant the relief sought.

The parties can appeal the court's decision on the application for interim relief to a higher court within 20 working days, although leave to appeal may be required in some limited circumstances. An appeal won't automatically stay the interim relief. However, a party may apply for a stay of the interim relief pending an appeal.

Prejudgment attachments and freezing orders

Freezing orders are a type of interim relief, which restrain a defendant from disposing of property before a final judgment. These applications are usually made in the High Court, and they can be made on an *ex parte* basis if there are good reasons for that, i.e. that notice or service may prompt the feared dissipation or dealing with assets.

A freezing order or an ancillary order can be made over any type of asset, for example, bank accounts, shares, real property or motor vehicles, but will generally be limited to those assets within New Zealand.

A freezing order will be made only to preserve the status quo to resolve a substantive cause of action brought by the claimant, and not as a standalone remedy. Further, a party obtaining a freezing order is obliged to take all reasonable steps to bring the proceeding to a substantive hearing so that the adverse effects of the freezing order last for the shortest period practicable. There is no fixed timeframe. However, generally, the court awarding a freezing injunction will include terms allowing the court to consider at a later time whether the freezing injunction should remain in place or be discharged.

The criteria for the issue of a freezing order are similar to the ordinary principles for the grant of an interim injunction, as discussed above, although the potentially serious impact on a defendant's property rights raises the threshold for the granting of a freezing order. Generally, a claimant must show that:

- the claimant has a good arguable case (in the substantive cause of action);
- the refusal of a freezing order will give rise to a real risk that any judgment given in the proceeding will remain unsatisfied, or that the recovery of any judgment will be prejudiced by the defendant removing assets from the jurisdiction, or dissipating assets within it; and
- the balance of convenience favors making the order.

A claimant for a freezing order is required to provide an undertaking as to damages, where the claimant undertakes to submit to an order of the court for the payment of compensation to any person affected by the operation of the order, should the claimant be ultimately unsuccessful in the substantive cause of action.

Costs

New Zealand courts have wide discretion to award costs against any party to cover an opposing party's costs of litigation. The general rule is that "costs follow the event". This means that the unsuccessful party will be liable to pay the litigation costs of the successful party.

Costs are awarded based on a scale set under the relevant procedural rules (usually the High Court Rules in a commercial case). This provides set amounts for each step in the proceedings based on three rates of complexity of the matter - simple, standard or complex. Generally, a party will recover approximately one third of its actual costs.

Courts may depart from the general rule in various circumstances and have wide discretion over costs, for example:

- where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect the litigants' relative success and failure;
- increased costs may be ordered where the party opposing costs has contributed unnecessarily to the time or expense of the proceedings, or a party has refused to accept an offer of settlement that is more than the party ultimately recovered; or
- indemnity (actual) costs may be awarded where a party has acted vexatiously, there is a contractual entitlement to indemnity costs, or the person in whose favour the costs order is made was not a party to the proceedings.

Various court fees apply for filing proceedings and hearing charges.

Class actions

In New Zealand, it is possible to bring a "representative" proceeding, or class action, where the proceeding is commenced by (or against) one person as a representative of numerous persons who have the same interest in the subject matter of the proceeding either with the consent of all represented persons, or with a direction from the court.

Class actions have historically been rare in New Zealand but are increasing.

The Law Commission has recently issued a report recommending that a specific legislative regime for class actions be put in place. The government has not yet confirmed whether or not it intends to act on this recommendation and introduce class action legislation.

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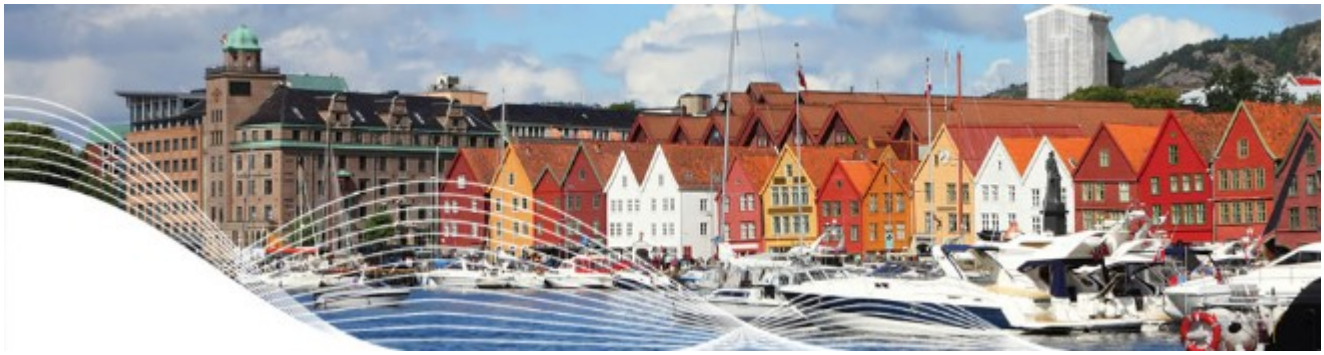

Norway

Last modified 29 October 2023

Overview of court system

Norway is a civil law jurisdiction, meaning that rules are generally set by statutes passed by the Storting (the Norwegian Parliament) rather than by case law. Nevertheless, case law by way of Supreme Court decisions remains a valid and important source of law, clarifying and establishing rules of law within the framework set by the legislator. Legislative history/preparatory works, lower courts' decisions, administrative practice and legal theory summarising or criticising rules of law are also relevant sources of law in Norway.

The Norwegian court system consists of the following courts:

- 23 courts of first instance (called "District Courts");
- six regional Appeal Courts; and
- the Supreme Court, which is Norway's final court of appeal based in Oslo.

The official language of the court is Norwegian, and as a general rule interpreters will be required if foreign languages are used. However, the court can make exceptions to this rule if all the participants in the action understand the foreign language being used. In this regard, we note that Scandinavian languages seldom raise any issues as to understanding. The same applies to English speaking parties and witnesses; such evidence, including the examination of such witnesses, will quite often be allowed without any interpreters involved. Other languages normally require the involvement of interpreters. It is rare for counsel not to speak in Norwegian in court, however the court may in principle allow litigators speaking in other languages to act as counsel or co-counsel insofar it does not give rise to any concern.

District Courts are normally the courts of first instance in most medium to high value civil disputes. Cases in the District Courts are usually decided by a single professional judge. The professional judge may be assisted by two or four lay judges or lay judges with specialist knowledge if the parties request so, or if the judge deems such assistance appropriate.

Before bringing civil claims before a District Court, claimants often need to bring their case before a Conciliation Board first. While normally this requirement applies to small claims only (being claims below NOK200,000 in value), higher value claims also have to be brought before a Conciliation Board first if one of the parties is unrepresented. The Conciliation Boards are staffed with non-legal members appointed by the municipality council and serve two main purposes: (i) they facilitate mediation to resolve disputes; and (ii) they can issue judgments upon request by both parties, provided that the claim exceeds NOK200,000. In specific situations, for example where both parties have legal representation and the claim exceeds NOK200,000, the claimant may bring the claim directly before the District Court without having to go to a Conciliation Board first.

Apart from the ordinary courts and the Conciliation Boards, parties can turn to specialized or quasi-courts (administrative bodies) which have substantive jurisdiction within specific areas. For example, the Labor Court deals with disputes arising from collective agreements, including their existence, interpretation and validity. This court has exclusive jurisdiction, meaning that cases which fall under its jurisdiction cannot begin in ordinary courts. While judgments of the Labor Court are usually conclusive, appeals may be allowed under rare exceptions. Other examples include: (i) the Financial Complaints Tribunal (Finansklagenemnda), which handles issues between consumers and financial entities like banks and insurance companies, and (ii) the Market Council, which handles complaints over the Consumer Authority's decisions under the Marketing Practices Act. Specialized and cost-effective tribunals can serve as a low-cost alternative to proceedings before the ordinary courts, and in some circumstances they are a pre-requisite to commencing a claim before

a District Court. However, note that the decisions of tribunals such as the Financial Complaints Tribunal are quite often not binding on the parties.

Limitation

The limitation period for civil claims is three years, as a general rule. Legal steps such as filing a complaint to the Conciliation Board, submitting a writ to the District Court or entering into an agreement postponing the deadline, must be taken before the claim becomes time-barred. Time-barred counterclaims may, however, be used as payment/set off insofar as it results from the same legal relation as the claim being settled.

Although the general limitation period for civil claims is three years, limitation periods may vary depending on the nature of the claim, for example a repayment claim covered by a promissory note would result in a ten year limitation period.

The date on which time begins to run may differ depending, for instance, on whether the claim is in tort or contract. In general, the limitation period starts from the earliest point at which the claimant could demand fulfilment of the claim. For contractual claims, this means that the limitation period starts from the time of the breach of contract. For tortious claims, time starts to run from the time the claimant became aware or should have become aware of the damage and the debtor/wrongdoer.

If the claimant was unaware of the claim or the debtor, a separate one-year limitation period runs from the day the claimant became aware or should have become aware of the claim. Such an additional limitation period, starting to run at a later stage, may grant a claimant more than the general rule of three years from the breach of contract (in a contractual claim), and is a very important rule in practice.

The additional one-year limitation period will, however, never provide for a claim to be heard later than 13 years from the breach of contract in contractual claims. By way of comparison, the maximum period for a claim in tort to be heard is 20 years after the basis of liability (ie the tortious act or omission) ceased to exist. There are some exceptions to this rule, including in claims for damages for personal injury.

Procedural steps and timing

Before submitting a claim to the Conciliation Board or lodging a claim before a District Court, a potential claimant should notify its claim to the opposing party in writing and bring to its attention material documents and other evidence. Parties must then explore the possibility of an amicable settlement. These rules are not procedural requirements in order to initiate an action and to obtain a judgment, however, the courts may take the lack of notice and/or failure to explore resolution of the dispute outside of court into account in the final costs award (depending on the consequences of such faults in the specific matter).

In order to initiate legal proceedings before Norwegian courts, the claimant has to submit a complaint to the Conciliation Board or a writ to the District Court. The writ should provide all necessary information for a clear presentation of the case, including: (i) the claim; (ii) its legal and factual bases; (iii) proposed evidence to be relied upon as part of the claim; (iv) the claimant's view as to jurisdiction, and (iv) the judgment which it seeks from the court. Complaints to the Conciliation Board may be less extensive than this. Self-representation is also possible before the District Court, however it is infrequent in commercial cases.

After receiving the writ, the District Court will serve it on the defendant, who generally has three weeks to provide a defense. During court vacations (which are Easter, summer and Christmas holidays), the deadline will automatically be postponed by the number of days for which the specific court vacation lasts. In complex matters, it is not unusual for a defendant to request an extension of the three-week deadline. At a minimum, the defense must contain of a short statement contesting the claim and/or objecting to the court hearing the case. However, in order to enable the defendant to produce a fuller defence beyond these minimum requirements, defendants are usually granted an initial extension on the standard three-week period. If a further extension is requested, the court will ask the claimant if it has any objections to this.

Following submission of the defense, the District Court will promptly arrange the initial case management meeting, often within a month. This is typically conducted via a telephone conference with the judge and counsel, and serves to establish the case's structure. The court will also schedule the main hearing at the initial case management meeting. The main hearing will usually be scheduled for within six months of submission of the original statement of claim, unless specific circumstances require a later date.

During legal proceedings in Norway, judges may suggest mediation unless this is not appropriate given the nature or circumstances of the case. Mediation can be, and often is, administered by a judge. The judge is required to maintain confidentiality if the mediation is

unsuccessful. To secure the parties' confidence in the judge's independence, a judge who has been involved in an unsuccessful mediation may only take part in subsequent proceedings with the consent of the parties and provided that the judge does not consider it inappropriate.

Judgments are typically issued within two to three weeks of the close of the main hearing, although this is often longer in complex, multi-party cases.

Disclosure and discovery

The discovery process for civil proceedings before Norwegian courts is not expansive. Each party is under a general duty to present such evidence as is necessary to establish a proper and complete factual basis for the court's decision. That general duty includes an obligation to disclose the existence of material evidence that is not in the other party's possession, provided there is good reason to believe that the other party is not aware of such evidence. This obligation extends not only to documents supportive of a party's case, but also to documents that are detrimental to it, if such documents are in a party's possession or if a party is able to access them through a third party it controls. However, these disclosure obligations do not extend to privileged information communicated between a party and its lawyers (including in-house counsel). In addition, there are other categories of documents that may be exempted from production, including documents containing commercially sensitive information.

In practice, disclosure of documents is achieved through a process of documentary requests. Each party to civil proceedings has the right to request the other party or third parties to produce specific and narrow categories of documents relevant to the matter. The request has to be specifically identified and so-called "fishing expeditions" are prohibited. If a party or third party does not comply with the documentary request, the court may order the party to submit the requested evidence. Such a decision is not enforceable against the parties - only against third parties. However, failure to comply with an order to disclose documents may of course be given weight in the court's assessment of the evidence and judgment. Further, both parties to the proceedings and third parties may be compelled by the court to respond to a request as to whether it is aware of evidence and to carry out necessary investigations for that purpose. However, the court may not request disclosure of evidence of its own initiative.

Before the commencement of legal proceedings disclosure of documents can be sought where they are of significance in a dispute to which the applicant may become a party or intervener, and there is either: (i) a clear risk that the evidence will be lost or considerably weakened, or (ii) there are other reasons why it is "particularly important" to obtain access to the evidence before legal proceedings are instigated. The latter threshold is somewhat unclear; the legislator refers to the lack of access to evidence as a potential barrier for a negotiated agreement between the parties, however, such a threshold would be higher than the threshold which applies to evidence disclosed after the commencement of proceedings.

Default judgment

Norwegian courts may give a judgment in default if a party fails to adhere to a time limit set for a procedural step, for example submission of a defense, or failure to attend a court hearing. If the claimant obtains default judgment against the defendant, this means that the defendant cannot prevent the claimant from getting a final judgment in the dispute. A judgment in default following a defendant's (or respondent on appeal's) default, has to be requested by the claimant/appellant. The court may reject a case/appeal *ex officio* following a claimant's/appellant's default.

In deciding whether to grant judgment in default, the court will base its decision on the claimant's allegations as to the facts, insofar as they do not appear to be clearly incorrect). However, the court will ultimately apply the law on its own initiative. If the court does not find in favour of the claimant in full or in the main, judgment in default will not be granted.

A judgment in default may be challenged by way of an application for reinstatement. An application for reinstatement must be made within one calendar month from the date of service of the default judgment. The threshold for granting an application for reinstatement is high.

Appeals

District Court judgments can be appealed to a Court of Appeal on the basis of assessment of evidence, application of law or procedural errors. Appeals in low-value cases (ie cases with a value of below NOK250,000) require permission from the Court of Appeal. The Court of Appeal may also deny permission to appeal in high-value cases, where it is clearly more likely than not that the appeal will not succeed.

Appeals must be filed within a month of the District Court's judgment. A shorter deadline may be set by the District Court, but this is not common. The respondent usually has a three-week deadline to reply to the appeal. Submitting a reply to the appeal is not a strict requirement by law, but is nevertheless best practice.

Even if a District Court judgment is appealed within the deadline, there would still be grounds to apply for an execution lien where the judgment concluded in one of the parties receiving a monetary award. An execution lien acts as security for the awarded sum awaiting the final and binding judgment. In any case, the execution lien has to be applied for and is not granted on the initiative of the court.

Following submission of the defense/reply, the Court of Appeal will promptly arrange the initial case management meeting. This is often held within a month of the Supreme Court having been forwarded the appeal and reply. The meeting is typically conducted via a telephone conference with the judge in charge of case management and counsel, and serves to establish the case's structure. The court will also schedule the appeal hearing at this meeting, which is usually between six months and a year from the date on which the appeal and reply was forwarded, unless specific circumstances require a later date. Please note that this timeline has varied a good deal over the last 15 years.

Judgments are typically issued within four weeks of the close of the appeal hearing, although this will often be longer in complex, multi-party cases.

If a District Court decision is set aside by the Court of Appeal, the case will be transferred back to the District Court (or other court that is to hear the case further). The District Court is bound by and shall apply the interpretation of the law which the Court of Appeal applied when setting aside the original ruling.

Appeals from the Court of Appeal to the Supreme Court need special permission from the Supreme Court's Appeals Committee. Leave can only be granted for appeals: (i) which concern issues of principle interest; (ii) which raise questions of significance beyond the scope of the relevant case; or (iii) for which there are other reasons why it is important that the Supreme Court decides the matter (for example, matters of public importance, concerning human rights etc.). The Appeals Committee's decision on whether further appeal to the Supreme Court is granted is normally delivered approximately a month after the appeal and reply is forwarded from the Court of Appeal to the Supreme Court. Once permission is granted, an initial case management meeting is held quite promptly thereafter. Supreme Court hearings are typically held within six months after the Supreme Court received the appeal and reply. Judgments are typically issued within two-three weeks of the close of the Supreme Court hearing.

If a Court of Appeal decision is set aside by the Supreme Court, the case shall be transferred back to the Court of Appeal or other court that is to hear the case further. The relevant court is bound by and shall apply the interpretation of the law which the Supreme Court applied when setting aside the original ruling.

Interim relief proceedings

Norwegian courts have the power to order two broad categories of interim relief in connection with civil proceedings: (i) arrests of goods/attachments; and (ii) interim measures. Arrest of goods requires a monetary claim to be secured (see our comments under "Prejudgment attachments and freezing orders") while interim measures are available to secure other types of claims. Interim measures include orders compelling the defendant to carry out or refrain from carrying out an act, or directing the defendant to transfer an asset into the custody of, for example, an enforcement officer.

An application for interim measures should be submitted to the District Court in the location where the defendant usually resides or, if the measure relates to property or another asset, where the assets belonging to the defendant are or are expected to arrive in the foreseeable future.

Most of the principles governing the applicability of such relief are equally applicable to attachments and interim measures; the claimant has to prove its substantive claim and a valid ground for security on the balance of probabilities.

Upon application by a party, Norwegian courts may grant such measures in two circumstances. First, interim measures may be available if the defendant's conduct makes it necessary to provisionally secure the claim because the action or execution of the claim would otherwise be considerably impeded. Second, such measures may be granted to avert considerable loss or inconvenience in connection with a disputed legal issue, or to avert destruction of property which is reasonably feared in view of the defendant's conduct.

As a condition to granting interim relief, Norwegian courts may order the party requesting such relief to provide security for any compensation that may subsequently be awarded to the other party for any unjustifiable loss it suffers as a result of the relief given.

The timeframe for obtaining interim measures will vary depending on the circumstances. If awaiting a hearing poses a risk, an order can

be made without an oral hearing; such an order may be obtained within a day or two following the application. If not, the court will summon the parties to an oral hearing. Depending on the circumstances, the hearing may be held between one and three weeks after the application. The same timeframe would apply to parties affected by an order held without any oral hearing; such parties may require subsequent oral proceedings and the court may uphold, amend or set aside its first decision either in whole or in part.

The court's decision may be appealed to the Court of Appeal (see our comments as to "appeals" above). Apart from parts of the decision providing for payment of money, interim measures granted by the court may be enforced awaiting the final and binding judgment from the Court of Appeal or Supreme Court.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are temporary measures governed by the same principles as interim measures. However, attachment of goods requires an underlying monetary claim to be secured. These measures can be obtained before the main legal proceedings begin, and the application should be submitted to the District Court where the defendant resides or where the defendant's assets are or are expected to be in the near future.

Upon the application of a party, Norwegian courts can order the attachment of assets, including anything convertible to money that belongs to the defendant. There are (limited) exemptions in place to protect individuals from losing essential items like clothing and the means to sustain their livelihood.

In order for Norwegian courts to seize assets, the debtor's conduct must give reason to believe that enforcement of the claim would otherwise be evaded, considerably impeded or would have to take place outside of Norway. The claimant has to prove its substantive claim in addition to the valid ground for security on the balance of probabilities. An arrest has the effect of prohibiting or otherwise preventing the owner of the asset from dealing with it in a manner that would be prejudicial to the party in whose favour the arrest has been granted.

The court may require the party seeking relief to provide compensation security for potential losses incurred by the other party due to the granted relief. An asset arrest can be lifted if new evidence shows the claim or the need for security no longer exists or if the petitioner delays the main proceedings improperly.

These interim measures can only be granted if both the underlying claim and the need for interim relief are likely to succeed. Main proceedings should start within two weeks of obtaining interim relief, and self-representation is possible but rare.

Costs

The general rule in Norwegian civil proceedings is that the successful party is entitled to recover its legal costs from the unsuccessful party. The court may depart from this general rule in certain circumstances, including: (i) if the unsuccessful party had good reason for having the case tried, for example if the case raises questions of principle interest and the court has been in doubt as to the result; (ii) if the successful party rejected a reasonable settlement offer; (iii) if the matter is important for the welfare of the unsuccessful party and there is a difference in strength between the parties, etc. Norwegian law also provides for awards of legal costs in cases where one of the parties has succeeded only in part, but nevertheless to a significant degree. Finally, costs may be awarded irrespective of the outcome of the case in rare cases, for example where costs are incurred due to a party's omission.

In any case, only costs which are necessary and reasonably incurred are recoverable. The level of legal costs incurred in legal proceedings is a focus area for the Norwegian courts, meaning that the parties' legal cost claims are more closely examined than the Dispute Act strictly requires.

It is common practice that successful parties are entitled to legal cost compensation even if they are represented by their own in-house counsel. The starting point in these situations is the successful party's actual yearly costs for its relevant in-house counsel (factoring in wage, tax, pension fund payments etc.), which are then broken down into daily/hourly costs. The next step is then to allocate the relevant costs incurred in the matter. These costs are subjected to the necessity test, in the same way as the costs to external counsel.

The court fees vary depending on the length of the proceedings and are subject to a minor adjustment each year. The court fee for admission to the District Court for 2023 is NOK6,215. This includes the first day in court. If the action does not end with a judgment (for example due to settlement) the fee will be reduced. The fee for interim relief is NOK3,107 as at 2023.

Class actions

Civil cases may be heard as a class action in Norway. A class action may be brought by or directed against a class if the claims have identical or substantially similar factual and legal bases.

A class action may be brought by a person who has a claim that falls within the scope of the class action. In addition, an action may be brought by an organisation, foundation or a public body responsible for advancing specific interests.

For the court to approve a claim to be heard as a class action, four requirements must be satisfied: (i) several legal persons have claims or obligations arising out of the same or substantially similar factual and legal bases; (ii) the claims can all be heard by a court with the same composition and in essence pursuant to the same procedural rules; (iii) the claims are most appropriately dealt with by way of a class action; and (iv) it is possible to designate a class representative.

If a court approves a claim as a class action, it determines the scope and whether it operates on an opt-in or opt-out basis. Under opt-in, parties have to register by a set deadline, while opt-out allows individuals to withdraw before a final court decision.

In class actions, the court appoints a class representative, which can be any eligible person, responsible for protecting the class's rights and recovering potential costs. The court sets a maximum cost liability when approving the class action and may require an advance payment. Legal representation is usually required, but exemptions may be granted by the court.

Recently, the Supreme Court determined that opt-out proceedings pursuant to the Dispute Act do not allow for third party funding arrangements which have a condition that the company receives a return of three times their investment in case of success, to be claimed from the class's awarded damages. It is up to the legislator to consider whether modifications to the Dispute Act should be made to enable the combination of opt-out lawsuits with external litigation funding through a reduction in awarded compensation.

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Oman

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Overview of court system

Oman's courts operate under the Judiciary Power Law (R.D 90/99), Civil and Commercial Procedures Law (R.D 97/99) and Oman Arbitration Law (R.D 47/97). Judges are independent of the state and their decisions are taken and implemented in accordance with the law. Hearings in Omani court proceedings are open to the public unless the court decides of its own accord or at the request of an interested party to hold them in closed session for valid reasons. Regardless, in all cases the verdict must announced publicly. Case documents are confidential to the litigants. Arabic is the official language in the Omani courts and all pleadings must be in Arabic (with foreign language documents requiring translation by a licensed translator). While it is extremely rare for witnesses to be required to give evidence in court, the courts will hear evidence given through an interpreter where a non-Arabic witness is required.

Omani civil courts have departments divisions including civil, commercial, labour, taxation, family affairs and leases. The civil court system is organized in the following instances:

- the First Instance Court (Primary Courti), which comprises of:
  - the court consisting of one judge, which has jurisdiction over all civil and commercial cases where the amount in dispute does not exceed OMR70,000, or if the dispute is subject to the Procedures Simplification Law (R.D 125/2020). Disputes are subject to the Procedures Simplification Law where it relates to foreign investment, lease contracts, individual labour contracts, construction and debt instruments. The court also oversees applications to issue orders to enforce the foreign judgments and arbitrate local or global judgments; and
  - the court consisting of three judges, which has jurisdiction over cases where the amount in dispute exceeds OMR70,000 and is in respect of the following areas:
    - bankruptcy and protective settlement;
    - liquidation of companies;
    - intellectual property and patents; and
    - dealings with securities.
- the Second Instant Court (Court of Appeal), hears appeals filed against judgments issued by the Primary Court, except where judgments are less than OMR1,000, or less than OMR2,000 (if the dispute is subject to the Procedures Simplification Law). In addition, the Court of Appeal hears the application for nullifying arbitration judgments.
- the Supreme Court is the ultimate court of appeal in Oman. It hears appeals filed against judgments issued by the Court of Appeal excluding disputes subject to the Procedures Simplification Law which are considered as final unless the dispute concerns foreign investment and exceeds OMR150,000.

In addition, there is a Settlement Committee working under the Supreme Judiciary Council's supervision, and a Settlement Department at the Ministry of Labour. Settlements signed before these are enforceable and not subject to appeal. There is a new Arbitration Committee at the Ministry of Labour for collective labour disputes.

Limitation

Under Omani law, the application of limitation periods are a substantive law issue and therefore governed by the laws applicable to a particular contract or interaction between the parties. Advice should be sought on a case-by-case basis since its expiry can critically affect a party's ability to bring a claim. The limitation periods in respect of Omani laws are set out below.

Omani law also prescribes a range of different limitation periods depending on the type of claim in issue, for example:

- one year to file labour claims;
- two years to file insurance recovery claims;
- three years to file a claim of construction defect; and
- five years to file a compensation claim for damage resulting from actions.

Procedural steps and timing

This is commenced when the claimant files the statement of claim (together with supporting documents), and electronically pays the applicable court fee through the court's system. The defendant will automatically receive an SMS on their mobile phone number registered in the commercial registration. The SMS will include the registered file number, the scheduled date for the first hearing and link to the statement of claim. In the event that the defendant has no mobile phone number registered, the court bailiff will serve a summons on the defendant. The parties or their representative lawyers are required to attend and produce their respective power of attorneys on the hearing date. The parties will exchange the submission for the next four to six months until the court is satisfied that it has seen all relevant evidence. The court will then fix a date for the examination of the claim and issue its decision with its final judgment or preliminary decision to hear witnesses, appoint experts, or any other investigative process. Although representation is not (in theory) mandatory, navigating the court system (which is complex and only in Arabic) is difficult without legal representation. In practice, parties are almost always represented.

A common and important feature of Omani court litigation (particularly in respect of complex construction disputes) is the involvement of one or more court-appointed experts which have been selected from an internal panel. Once appointed, an expert will meet the parties over a period of three to six months, review the case, and prepare a report of their findings. During this time, the court will continue to hold monthly hearings to monitor the status of the expert review process.

The parties, individually or collectively, have a right to object to the content of the expert's report. If the court agrees with the objections raised, it may order that the expert revisit its report to address the parties' objections or, alternatively, make an order to appoint a different expert. However, once the court is satisfied with the contents of the report, it will typically rely upon it heavily when giving its decision. It may take up to two years for a judgment to be given in cases before the Omani Primary Court.

After the judgment of the Primary Court is issued, the parties have the right to appeal to the Court of Appeal. The typical time period for appeal is 30 days, however, this may be subject to change depending on the nature of the dispute. For example, the time limit is 15 days for disputes subject to the Procedures Simplification Law and around family law disputes; while the time for appeal to the Supreme Court is 40 days.

Disclosure and discovery

When filing a claim, claimants in the Omani courts are required to produce documents that support their claim. The defendant has the right to have a copy of all documents submitted by the claimant and the right to respond or submit any documents they believe supports their position.

Both parties have the right to ask the court to issue an order to obtain certain documents from the other party or third party. However, there are often evidentiary issues as the party must prove that the document exists and that it is in the possession of the other party.

Default judgment

Where the statement of claim has been personally served on a defendant and that defendant does not submit any documentary pleading in response to the statement of claim, or otherwise fails to appear in court after having been summoned, the court will give its judgment in the absence of the defendant. The judgment will therefore be based on the court's review and consideration of the evidence produced by the claimant alone. It is worth noting that the defendant will be served the summons personally or at their place of residence to compel

them to participate in the proceedings. If the bailiff is unable to locate the defendant, the bailiff will deliver the summons to the defendant's representative, employee, spouse, relative or in-laws. If the summons is not served on a defendant who subsequently fails to participate in the proceedings, the court will adjourn the case to a subsequent session and notify the defendant of the proceedings. Even if the defendant has been served, there is scope under Omani law for a party to have such judgments reconsidered in exceptional circumstances.

Appeals

There are two levels of appeal in Omani court proceedings: first to the Court of Appeal and secondly, to the Supreme Court. Judgments of the Court of Appeal can be enforced by the judgment creditor notwithstanding any further appeal by the judgment debtor, except where the Supreme Court issues a decision for valid justification to suspend the enforcement until its final judgment. Enforcement action is dealt with by a separate Department of Execution within the Primary Court. While the right of appeal to the Court of Appeal is automatic and thus the majority of cases are appealed, the right of appeal to the Supreme Court is limited to circumstances where there has been an error of law or a procedural irregularity.

Any party seeking to appeal a judgment of the Omani civil courts should ensure that it does so within the applicable time limit (ie 15 or 30 days for the Court of Appeal and 40 days for the Supreme Court). It is common for the Court of Appeal and Supreme Court to take one year to issue their judgment in relation to an appeal, but this can vary depending on the caseload of the courts at the time.

Prospective claimants should be conscious that the broad rights of appeal available in the Omani courts can add considerably to the cost and delay in litigating in the country. This is similar to other legal systems in the Middle East.

Interim relief proceedings

Interim relief proceedings are not available in the Omani courts. However, interim relief may be granted by way of a precautionary attachment to freeze the debtor's assets.

Prejudgment attachments and freezing orders

In Oman, prejudgment attachments are referred to as precautionary attachments. A precautionary attachment can be sought from the Primary Court either as a precautionary or as an enforcement measure.

A precautionary attachment may be granted in circumstances where a party can prove: (i) that it is owed a due and payable debt; and (ii) the debtor is at risk of dissipating its assets and/or is a flight risk.

An application for a precautionary attachment is an *ex parte* application which requires substantive proceedings on the merits to be filed, by way of a claim, within two weeks of the application being granted.

Any fixed and/or movable assets of the debtor are liable to attachment, including:

- licenses and registrations (including its trade, commercial license and accounts with the labor or immigration authorities);
- fixed assets (including real property);
- moveable assets (including bank accounts, plant, office furniture, machinery and securities); and
- receivables owed to the debtor from third parties in Oman (including debts and liabilities).

Once an attachment order is granted, the court will write to various institutions where a debtor may have assets and the governmental bodies who regulate them. Those institutions include:

- the central bank;
- the real property registration authority;
- the commercial licensing authorities;
- the vehicle registration authorities; and
- the stock exchange.

In its letters, the court will confirm the value of attachment and request the relevant institutions to confirm the debtor's assets that are held and/or registered by them. The court will then ask for attachment to take place over the assets to its relevant values.

The court can also attach specific assets that the applicant believes are in the possession of a third party but are owned by the debtor. This includes where the debtor has goods in the warehouse of a third party or receivables or debts owed to it under a contract or other instrument. The difficulty with placing an attachment on such assets is an evidential one; not only must the applicant be aware of the existence of the relevant assets, debts, or receivables, it must also prove to the court that the assets belong to the debtor.

Where a debtor's assets are not sufficient to satisfy the value of the attachment, it is possible that some or all of its assets will be subject to attachment (to the extent they are discovered) regardless of whether they have any monetary value (for example, an empty or overdrawn bank account, or plant/machinery whose depreciation value is zero may nevertheless be subject to attachment).

The effect of an attachment is that assets are effectively frozen. For example, bank accounts are frozen and cannot be operated by their holder, and moveable assets and/or property are affixed with signs or seals to identify that they have been attached and cannot therefore be used.

It is also possible for a party to seek to impose travel bans on the authorized signatories and/or managers of the debtor. The individuals at risk will usually be those listed on the commercial license of the debtor.

There are two ways in which a party may lift an attachment on its assets. First, by providing security to the Court Treasury. Once this security is provided, the attachment can be transferred to the security, and so released from the debtor's assets. The form of security is at the discretion of the court and can include:

- a payment into the Court Treasury for the amount of the attachment. Such payment can be made by a third party, such as any other debtor entity on behalf of the debtor; and/or
- the authorized signatory(ies) and/or manager(s) of the debtor depositing their travel documents with the Court; or
- by successfully challenging the attachment. Challenges to an attachment proceed through the following tiered appeal system;
- an initial grievance before the court that granted the attachment. It may be possible to successfully discharge a precautionary attachment after a successful grievance which usually takes three to four weeks to resolve (assuming that service of proceedings is effected swiftly);
- an appeal before the Court of Appeal; and
- an appeal before the Supreme Court.

An attachment, if granted, remains in place while the challenge to the attachment is being considered, which can take up to two years to conclude.

It is not possible for the debtor to claim damages incurred as a result of the attachment.

Costs

Court fees (including experts' fees) are generally recoverable by the successful party in Omani court proceedings, but only a nominal amount will be awarded for lawyers' fees. Where neither party has been entirely successful in their claims, the court may decide that each party shall bear its own costs. The prevailing party may be ordered to pay some or all of its costs if:

- the claim was undisputed by the defendant;
- the prevailing party caused unnecessary costs to be incurred; or
- the prevailing party failed to provide its opponent with the documents (or its contents) which the court deems to be conclusive in the matter.

The court fees payable for claims and appeals vary depending on the nature and value of the claim. They include the following:

- Commercial disputes: 2% of the amount of the claim or appeal, with a minimum of OMR30 and maximum of OMR3,000.
- Civil disputes: 2% of the amount of the claim, with a minimum of OMR10 and maximum of OMR30, and 2% of the amount of the appeal, with a minimum of OMR20 and maximum of OMR50.

- Family dispute: OMR5 except the inheritance dispute calculated according to the civil disputes' fees.
- Labour dispute: there are no fees for labour disputes for employees. However, for the employer this will be calculated according to the commercial disputes' fees.
- For an appeal to the Supreme Court, the fees are OMR25, in addition to OMR as grantee and OMR10 if there is an application to suspend the enforcement.
- There is no fee for enforcing the judgments.

Class actions

Class actions are not recognized under Omani law or the Omani courts procedure.

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Poland

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Overview of court system

The Polish legal system is codified and part of the civil law tradition. The main statute which governs civil proceedings in Poland is the Civil Procedure Code (CPC), which applies to proceedings before the common courts. As Poland is a member of the EU, EU law is fully implemented in Poland and the courts are required to apply EU regulations directly.

Judicial authority in Poland is exercised by courts (the Supreme Court, common courts and administrative courts) and tribunals (the Constitutional Tribunal and the Tribunal of State). Common courts exercise general jurisdiction in almost all civil and criminal matters and comprise the following:

- district courts (with jurisdiction to hear small cases at first instance);
- regional courts (which hear cases at first instance with a value exceeding PLN100,000 (c. EUR22,500) and appeals from district courts) and some listed categories of cases; and
- appeal courts (which hear appeals from regional courts).

The common courts have civil, criminal, commercial, labor, companies registry and bankruptcy divisions. The Supreme Court is primarily a court of cassation which reviews second instance judgments on an extraordinary basis (i.e. it will only interpret the relevant law and not re-examine the facts of a case).

With the exception of certain judgments of the Supreme Court, judgments do not generally create binding precedents. However, judgments in similar cases, in particular those given by the Supreme Court, may be relied upon by the courts in support of their decisions.

Litigation is possible only in Polish. All documents in foreign languages that constitute evidence should be translated by a sworn translator. Witnesses who do not speak Polish are assisted by a translator.

Limitation

The limitation period starts from the date when the claim arises (or if action is required for the claim to become due, from the earliest possible time when it could have arisen i.e. when certain action could have been taken).

The limitation periods applicable to civil claims are in general:

- six years; or
- three years where the claim relates to periodical performance and/or business activities (i.e. commercial cases).

However, the limitation period ends on the last day of the calendar year (unless the limitation period is less than two years – which it can be in certain cases).

Generally speaking, a creditor or claimant is entitled to pursue their claim even after the relevant limitation period has expired. It is then for the debtor or defendant to raise a limitation defense. If the debtor or defendant does not raise this defense, the court will be entitled

to award relief pursuant to the claimant's request.

Procedural steps and timing

A civil claim is commenced by filing a statement of claim with the competent court. The statement of claim must specify the amount in dispute and the relief sought, and include factual particulars of claim and supporting evidence (including documents, witness testimonies and expert opinions, where relevant).

With the exception of proceedings before the Supreme Court, parties are not required to be legally represented. Parties are allowed to appear in person but if they choose to be legally represented, such representation must be by a duly authorized lawyer, an advocate (adwokat) or an attorney-at-law (radca prawny).

The court will consider whether a statement of claim complies with the necessary formalities. If it does, the court will serve it on the defendant. Depending on the court, this stage may take from two weeks up to even two or three months.

A party may file supplementary pleadings with the court. However, all allegations, applications and evidence should be raised in the statement of claim or in the response to a statement of claim. Only in exceptional cases may a party file a subsequent initial pleading. At this stage, a defendant may raise any defense to the claim.

The judge has discretion to decide whether the applications and evidence in the initial proceedings have been raised on time or if they are late. Parties to the dispute are required to present relevant evidence only, so there is no need to present all the documents relating to the underlying facts of the case. A party may request that any person (i.e. the other party or a third party) be ordered by the court to present specific documents in their possession that are relevant to the case. However, there is no regulation about the production of documents before trial.

The timing and duration of the proceedings depend on the court's workload. In more complicated cases which require a number of witnesses and/or expert hearings, judgment is usually delivered by the first instance court between two and five years after the claim is issued.

Disclosure and discovery

Under Polish law, parties are free to determine what evidence they want to rely on. All supporting material relating to the facts of a case constitutes evidence. The court has discretion to assess the credibility and weight of evidence, based on a review of the available material. The parties are obliged to present evidence in order to establish relevant facts to which they apply the law. The court may also admit evidence which has not been presented by a party (e.g. evidence introduced in an expert opinion or the deposition of a witness). In principle, however, the parties have the burden of submitting the evidence upon which they wish to rely.

Fishing expeditions are prohibited. Where a party wishes to obtain a specific document from the other party, it must submit a request to the court identifying the specific document along with the facts and circumstances which it may prove. The court may order the other party to disclose the document if it is satisfied that the document:

- exists (a party may claim that the requested document does not exist);
- is in the other party's possession; and
- evidences a fact which is relevant to the case.

In addition, a court may order any person to produce a specific document which is (i) in their possession and (ii) evidences a fact that is relevant to the case.

The obligation to disclose a specific document may not apply if the document contains privileged or classified information.

If a party fails to produce a specific document which the court has ordered to be produced, the court will not impose a penalty on the non-disclosing party. However, during its assessment of the reliability and validity of evidence, the court will also assess the significance of a party's refusal to present evidence (or a party's interference with the taking of evidence). Unjustified refusal of third parties to provide a requested document(s) can lead to a penalty of up to PLN3,000 (EUR650).

Additionally, the evidence can be secured (during or prior to the start of proceedings), when there is a concern that it will become impractical or difficult to obtain it in the future, or when there is a need to record the existing state of affairs. In urgent cases (or where

the adverse party cannot be identified or their residence is unknown), the evidence can be secured *ex parte*.

Default judgment

According to the CPC, the court may issue a default judgment if:

- the defendant does not file a statement of defense within the specified time limit or if - despite failure to file a statement of defense - the case was referred to be heard at a trial but the defendant fails to appear at a trial or appears but takes no active part in the trial; and
- the court has no reasonable doubts about the veracity of the claimant's allegations or described facts and they are not designed to circumvent the law.

The court issues default judgment *ex officio* (it does not have to be requested by the claimant). The court's examination of the merits of the case is very limited – the claimant's statements are deemed to be true unless they raise reasonable doubts.

A defendant, against whom a default judgment has been delivered, may file a statement of opposition within two weeks of the judgment being served. A claimant may also appeal the default judgment if the relief sought in the statement of claim is not granted in full by the court.

Appeals

A losing party may appeal against a judgment of the court of first instance to the court of second instance. The appellant must demand a written justification for the judgment and has two weeks from its receipt to file an appeal (or three weeks in certain circumstances). It is necessary to file the appeal via the first instance court. The respondent has to file a response within two weeks of the delivery of the appeal. In general, the appeal suspends the effects of the appealed judgment. In the second instance, the court rules on the merits and reconsiders the whole case. New evidence may be admitted or rejected by the court if the party could have raised it in the first instance.

There is no specific time limit for the court of first instance to pass on the case files to the court of second instance. The only direction contained in the CPC is that the court of first instance must "promptly" send on the case files to the court of second instance. The duration of proceedings before the court of second instance varies, depending on the court's workload. Second instance proceedings may last, on average, between six months and two years.

The Polish legal system also provides for an extraordinary review of the judgments of second instance courts (i.e. a cassation appeal to the Supreme Court) which must be brought no later than two months after the delivery of the judgment along with a written justification by the second instance court. A cassation appeal will be accepted and processed if:

- the case presents a significant legal issue or an issue that causes discrepancies between court judgments;
- a cassation appeal is manifestly justified; or
- the earlier court proceedings were invalid.

A cassation appeal cannot be based on erroneous interpretations of facts/evaluation of evidence. Strictly, it concerns the legal merits of the case only. The case may be reconsidered partly or completely depending on how the legal issue in question affects the outcome of the case.

The cassation proceedings may take between nine and 12 months before the Supreme Court decides on the merits of the case. However, the timing and duration of the proceedings depend on the court's workload and the complexity of the case. According to the CPC, the Supreme Court is not limited by any deadline in deciding the case.

In cases before the Supreme Court, only an attorney who is admitted to the Polish bar (an advocate or an attorney-at-law) is permitted to write the appeal and represent a party during the hearings.

Interim relief proceedings

Interim relief measures are provisional measures sought in order to secure the claim at an early stage (i.e. measures which will satisfy an eventual judgment) and are referred to in the CPC as security. In monetary cases, security may involve freezing a bank account, establishing a mortgage over real estate or a registered pledge over equipment and machinery, seizing movable property, or even

appointing an administrator for an enterprise, all of which would be in force for the duration of the proceedings. In non-monetary cases, the claimant may demand that the court secure the claim temporarily by governing the relationship between the parties or granting other relief tailored to the circumstances.

A claimant may seek security (i) before legal proceedings are commenced; (ii) when they file the statement of claim, or (iii) when the main proceedings are already underway. In general, the application for security will be filed with:

- the court with jurisdiction to hear the main claim when the application is made pre-action;
- the court hearing the claim when the case is already underway; or
- the court where the interim relief will be executed when the application is made after the judgment has been issued.

The court must examine applications for security immediately and not later than a week after they have been filed with the court. An application which is filed with the court before the statement of claim is submitted will be considered without the defendant being notified (i.e. ex parte). If the claimant is granted security before the litigation has commenced, the court will indicate a two-week deadline to file the statement of claim with the competent court.

The court will grant the security sought if it finds that the claimant has substantiated:

- its claim (i.e. prima facie the claimant has a good claim);
- its legal interest in obtaining security for the claim; and
- that satisfaction of its claim would be hindered if interim relief was not granted.

Legal representation by an attorney is not mandatory in security proceedings. The court fee for a security application is 1/4 of 5% of the value of the case, capped at PLN50,000 (EUR11,200) if it is filed before the judicial proceedings. When a security application is filed together with the statement of claim, there is no separate court fee for the application. The court fee for a security application filed in the course of the proceedings amounts to PLN100 (EUR22,50).

A defendant against whom security has been granted, may file an appeal within seven days of receipt of the judgment. An appeal does not suspend the effects of the judgment.

If the court does not grant relief, the claimant may also challenge the court's decision and file an appeal within seven days from the delivery of the judgment.

Prejudgment attachments and freezing orders

Security may be sought in any civil case heard by a court or an arbitration tribunal. The court may grant security prior to the start, or during the course, of the proceedings. In principle, the court which is competent to hear a case at first instance is also competent to grant security.

Security may be sought by any party to (or participant in) the proceedings if the party/participant can substantiate its claim and legal interest (by demonstrating prima facie that its claim is legitimate and has a legal basis) in having the security or injunction granted. A legal interest in having the security or injunction granted exists where the absence of security or injunction would prevent, or significantly hinder, the enforcement of a judgment issued in the case, or would otherwise prevent or significantly hinder the objective of the proceedings being achieved. Except as otherwise provided by law, no security may be sought to satisfy a claim.

Pecuniary claims can be secured through:

- attachment of movable property, remuneration for work, bank account receivables, other receivables or other property rights;
- encumbrance of the debtor's immovable property with a compulsory mortgage;
- injunction prohibiting the transfer or encumbrance of immovable property which has no land and mortgage register or whose land and mortgage register has been lost or destroyed;
- encumbrance of a ship or a ship under construction with a maritime mortgage;
- injunction prohibiting the sale of a cooperative title to premises; or
- receivership established over an enterprise, agricultural farm or plant constituting part of the enterprise (in whole or in part).

With respect to claims other than monetary claims, the court shall grant such an injunction as it considers appropriate in the circumstances, not excluding a form of security or injunction relevant to monetary claims. In particular, the court may:

- regulate the rights and obligations of the parties to or participants in proceedings or pending proceedings;
- prohibit the disposal of assets or rights involved in the proceedings;
- stay enforcement or other proceedings aimed at enforcing a decision;
- decide on the custody of minors and contact with a child; or
- order that a relevant warning notice be recorded in a land and mortgage register or another relevant register.

In principle, the court should grant the methods of securing the claims preferred by the claimant.

The process takes place ex parte, i.e. except as otherwise provided by a specific regulation, an order granting security issued in the judge's chambers, and enforceable by an enforcement authority, is only served on the creditor. Service on the debtor is effected by the enforcement authority after the order has been made. In the case of an order granting security, the creditor's appeal or the decision of the court of second instance regarding the appeal will not be served on the debtor when the decision is enforceable by an enforcement authority.

A prejudgment attachment must always be followed by a claim on the merits. If the court grants security before proceedings are commenced, the court will set a deadline for filing the statement of claim of two weeks from the order granting security. Security will be lifted if (i) the statement of claim is not filed by the deadline set by the court; or (ii) the creditor (a) does not pursue the entire secured claim; or (b) pursues a claim other than that which was secured.

Equally, if (i) the creditor fails to file a statement of claim by the prescribed deadline or withdraws a statement of claim; (ii) a statement of claim is returned or rejected; (iii) an action is dismissed; (iv) proceedings are discontinued; or (v) the creditor does not pursue the entire claim or pursues a claim other than that which was secured, the debtor may claim damages against the creditor for losses caused by the enforcement of security. The claim for damages has a one-year limitation period from the date when the statement of claim is returned or rejected, an action is dismissed or proceedings are discontinued. If an appeal is filed with the Supreme Court, the one-year time limit will start running on the day when proceedings are concluded with a judgment or decision that cannot be appealed.

Costs

The costs of legal proceedings in Poland are generally low. The general rule in commercial cases is that when a case is filed, the claimant has to pay the court fees. The court fees are 5% of the value of the dispute, but court fees are capped at PLN200,000 (around EUR45,000). The same court fees apply to appeal and cassation proceedings. In principle, the unsuccessful party pays the costs of the legal proceedings (court fees, attorneys' fees, and other expenses such as experts' fees). However, the amount granted by the judge for attorneys' fees must be within the limit prescribed by law and may not exceed six times the minimum rate (see below). The reasons for an increased rate may include:

- the case is complicated;
- the attorney's workload was heavy; or
- the value of the litigation.

In practice, courts often award the minimum rate. For instance, if the value of a dispute is between PLN2,000,000 (EUR450,000) and PLN5,000,000 (EUR1,125,000), the minimum rate is PLN15,000 (EUR3,400) and the maximum rate is PLN90,000 (EUR20,400), and if the value of the dispute is above PLN5,000,000 (EUR1,125,000), the minimum rate is PLN25,000 (EUR5,600), and the maximum rate is PLN150,000 (EUR33,600). Experts' fees are also subject to regulation and are very low (usually between EUR1,000 and EUR7,000). The question of costs is decided in the last phase of judicial proceedings at the time of the judgment. The courts ask parties for advance payments on expert fees.

Class actions

Class actions (or group proceedings) are only permissible in the following areas: consumer protection, product liability, liability for the non-performance or improper performance of a contractual obligation, unjust enrichment, and tort cases where the claims arise from the

same or a similar set of facts. Regional courts are competent to hear class actions in first instance. The conditions which must be met in order for a class action (group proceedings) to be admitted are as follows:

- the claims arise from the same or a similar set of facts;
- the claimants are claiming the same amount as other members in a certain group or sub-group;
- there are at least ten claimants; and
- the claimants are represented by counsel.

The role of the representative (who holds the sole mandate to institute class action proceedings) can be performed by a member of the group or a local consumer ombudsman. All members of the group must approve the person who will act as the representative. Members of a group in class action proceedings must directly express their wish to participate in the proceedings by submitting a declaration when joining the group (before the proceedings are instituted or during the second stage, while the group is being formed). A binding judgment is effective upon all members of the group and can only be appealed collectively by the group's representative. However, those who have not joined the group, or who have left the group (the possibility of leaving the group is limited by certain time frames), can individually pursue their claims.

The timing and duration of the proceedings depends on the case complexity and number of claimants. Usually, class action proceedings are more lengthy than standard proceedings and last between 4 – 10 years.

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Portugal

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Overview of court system

Portugal is a civil law jurisdiction. The Portuguese courts operate principally under the Portuguese Civil Code (the Code) and Civil Procedural Code (the Procedural Code), and the primary sources of law are laws and customary rules (as provided for in Article 348 of the Code and based on a social practice with a strong conviction of legality).

The Portuguese civil court system is organized into a three-tier structure:

- Courts of First Instance (District Courts) – for all initial claims irrespective of the claimed amount;
- Courts of Appeal (*Tribunais da Relação*) – in general, an appeal to these courts is admissible if the value of the claim is higher than EUR5,000 and the decision is unfavourable to the appealing party in an amount higher than EUR2,500; and
- The Supreme Court of Justice – an appeal to this court is only admissible under certain circumstances (namely, where the value of the case is higher than EUR30,000 and the decision is unfavourable to the appealing party in an amount which is higher than EUR15,000).

Outside of this system, there is also the Constitutional Court. An appeal can be submitted to the Constitutional Court in specific situations to argue the unconstitutionality of a specific interpretation of a provision of law applied in a particular case.

The Constitutional Court only determines matters directly related to the interpretation and applicability of constitutional provisions. On the other hand, the Supreme Court decides on matters of law in general (but excluding any review of facts deemed proven).

The Portuguese legal system does not employ the rule of precedent. As such, the court will decide each claim before it relying solely on what has been prescribed by law. However, arguments based on case law/jurisprudence can be persuasive and are often used to reinforce legal arguments in written pleadings, along with doctrine.

Courts are not obliged to follow previous court rulings, unless the previous decision is one of the Supreme Court of Justice with standardisation of jurisprudence over a specific legal interpretation, as explained in the *Appeals* section below.

Rules on jurisdiction determine in which Court of First Instance a particular case should be filed. Should a case be appealed, the territorial jurisdiction of the presiding Court of Appeal will depend on the location of the Court of First Instance that issued the decision being appealed.

First Instance Courts are, in general, District Courts, which are divided into:

- Courts with general jurisdiction; and
- Courts with specialised jurisdiction, which may fall into one of the following categories:
  - Central Civil;
  - Local Civil;
  - Central Criminal;
  - Local Criminal;

- Local Petty Criminal;
- Criminal Investigation;
- Family and Minors;
- Labor;
- Commerce; and
- Enforcement.

In addition to District Courts, there are also Courts of Extended Territorial Jurisdiction, which have jurisdiction over more than one district or over areas specifically referred to by law. These courts deal with specific matters, regardless of the applicable form of procedure. In particular, the Courts of Extended Territorial Jurisdiction are:

- The Intellectual Property Court;
- The Competition, Regulatory and Supervisory Court;
- The Maritime Court;
- The Court of Penalties Enforcement; and
- The Central Court of Criminal Instruction.

According to Article 133 of the Procedural Code, Portuguese is the mandatory language of the courts, and all judicial documents and oral hearings must be in Portuguese. If there are documents or testimonies in another language, an official translator must be appointed by the court.

Limitation

The general limitation period for civil claims in Portugal is 20 years from the date that the claimant's right to bring the claim becomes enforceable (i.e. the moment when the claimant knew or ought to have known – whichever is the earlier – the circumstances giving rise to such right and the identity of the defendant). There are, however, exceptions providing for shorter limitation periods, notably the following:

- Five years for statutory or agreed interest, namely within financial agreements, and other specific situations;
- Three years for non-contractual liability;
- Two years for lawyers' fees and other payment of services claims, amongst other things; and
- Six months for claims from establishments providing accommodation services against consumers, amongst other things.

The most common trigger for a limitation period to start is the event that constitutes the grounds for the claim, but a later date can be triggered if the perpetrator or details and/or consequences of the event only become known at a later date.

Given the number of potential scenarios, the limitation period for each claim must be analyzed on an individual, case-by-case basis.

Procedural steps and timing

Proceedings are commenced by submitting an initial statement of claim to the court, usually through the e-justice platform (*Citius*). Under Article 552 of the Code, the claim must:

- Identify the parties and the court before which the claim is filed;
- State the factual and legal grounds of the claim and the legal consequences; and
- Provide a specific indication of the evidence that the claimant intends to offer or request in the proceedings and, in particular, list the documents which the claimant exhibits to the statement of claim.

The Court serves the claim on the defendant by post. The deadline to submit a defense varies from ten days in fast-track cases to 60 days

when the defendant resides abroad.

The defense must set out all the grounds for the Court to dismiss the claim, including any that could lead to summary dismissal. Grounds for summary dismissal include:

- Expiry of the relevant limitation period;
- Lack of jurisdiction;
- Lack of legal standing;
- *Res judicata* (which prevents a party from re-litigating a claim or defense (or issue) already litigated); and/or
- *Lis pendens* (pending lawsuit regarding the same matter).

Once the defense has been submitted, the next stages include:

- A preliminary hearing;
- Expert reports and other actions relating to the production of evidence by the parties; and
- A trial hearing.

The average length of first instance proceedings may range from 18 to 24 months. For appeals in the Courts of Appeal, the average length may range from six to 12 months and for the Supreme Court of Justice from another 6 to 12 months. However, proceedings can be shorter or last much longer, especially when the facts are disputed and must be established by the court, or if other issues arise.

When the Court of First Instance issues its final decision, the deadline for the losing party to file an appeal is 30 days from notification of such decision, reduced to 15 days in cases specified by law, such as an appeal within a proceeding which is deemed to be urgent (amongst other things).

The appeal must be filed by means of an application addressed to the Court of First Instance that issued the decision being appealed and must also indicate the type, effect, and method of lodging the appeal. The application to file the appeal must contain the appellant's briefs stating the specific grounds of appeal and respective conclusions. If all these formal requirements are fulfilled, the Court of First Instance will admit the appeal and refer it to the competent Court of Appeal.

Once the Court of Appeal has granted its decision, and if an appeal to the Supreme Court of Justice is legally permissible, the same time limits shall be observed.

Legal representation for civil proceedings is mandatory in cases where:

- An ordinary appeal is admissible due to the claim's value;
- An appeal is always admissible, regardless of the amount; and
- Appeals are initially filed in higher courts.

Disclosure and discovery

There is no obligation to provide full discovery under Portuguese law. This means that the parties are not obliged to share relevant documents unless an order to this effect is issued by a judge. Such orders can only be made when one party specifically requests a document to be disclosed by the adverse party and the judge deems such disclosure necessary. Requests which reference an excessively broad class of documents or information on a certain matter, or that will lead to non-specific searches will not be granted by the court.

The requesting party must indicate the facts it intends to prove with the documents requested. The disclosure request will only be granted by the court if the requesting party is unable to obtain the documents by other means or would have substantial difficulty in doing so. The court may also order the parties to disclose documents or other evidence of its own volition. Evidence can not be obtained ex parte.

In Portugal, the general rule is that each party shall allege and prove the facts on which the claim or the defense is based. Any facts not objected to by the opposing party will be deemed to be admitted and therefore proved. Therefore, only disputed facts will be subject to further evidence.

Generally, all evidence should be provided by the parties with their written pleadings. After the pleadings have been filed, the appropriate time to submit documents and other evidence, or to change the evidence previously submitted, is at the preliminary hearing.

The parties can amend their list of witnesses until 20 days before the trial hearing. If a party chooses to do so, the opposing party will have five days to do likewise.

Under Portuguese law, all individuals are under a duty to cooperate with the court in discovering the truth. This includes the duty to provide whatever documents or information are requested by the Court. However, certain documents such as privileged communication between lawyers or other documents containing professional secrecy are excluded from disclosure, unless the court grants a specific order, which only occurs when there is no other means of proving a fact which is essential to discover the underlying truth).

Default judgment

If the defendant does not appear before the court on the date set in the writ of summons or otherwise specified by the judge, the claimant will be awarded a judgment in default unless the court verifies that the claim was not properly served, or it appears prima facie to lack any legal basis.

Even in the case of a default judgment, the claimant is required to prove his case, and the court will always analyze whether the claim is founded or not before rendering a default judgment.

A defendant met with a default judgment has the option to appeal to the Court of Appeal within 30 days calculated from the notification of the default judgment decision.

Appeals

In the Portuguese jurisdiction, there are ordinary and extraordinary appeals. Ordinary appeals must be filed before the decision becomes *res judicata* (which means final and binding) – in general within 15 or 30 days of the notification of the final decision to the parties, depending if it is an urgent proceeding (such as an interim relief proceeding) or an ordinary proceeding (although other specific timeframes might be applied). Extraordinary appeals can, in some circumstances be filed outside those timeframes (see below).

In general, claims brought before the Court of First Instance may only be appealed to the Court of Appeal if the value of the claim is higher than EUR5,000 and the decision is unfavourable to the appealing party in an amount higher than EUR2,500. The Court of Appeal decides on matters of fact and law.

As for the decisions of the Court of Appeal, an appeal to the Supreme Court of Justice is only admissible under certain circumstances (namely, where the value of the case is higher than EUR30,000 and the decision is unfavourable to the appealing party in an amount which is higher than EUR15,000). However, if the first instance judgment is upheld by the first-level appellate court on broadly similar grounds and without any dissenting options, the matter cannot be appealed to the Supreme Court of Justice. The Supreme Court of Justice only decides questions of law.

For decisions on interim relief proceedings (described below), there is generally only one level of appeal, which means that the decision granted by the first-level appellate court cannot be appealed to the Supreme Court.

For appeals in the Courts of Appeal, the average length may range from six to 12 months and for the Supreme Court of Justice from another six to 12 months. However, proceedings can be shorter or last much longer, especially when the facts are disputed and must be established by the court, or if other issues arise.

When the Court of First Instance issues its final decision, the deadline for the losing party to file an appeal is 30 days from notification of such decision, reduced to 15 days in cases prescribed by law, such as an appeal within a proceeding which is deemed to be urgent (amongst other things).

The appeal must be filed by means of an application addressed to the Court of First Instance that issued the decision being appealed and must also indicate the type, effect, and method of lodging the appeal. The application to file the appeal must contain the appellant's briefs stating the specific grounds of appeal and respective conclusions. If all these formal requirements are fulfilled, the Court of First Instance will admit the appeal and refer it to the competent Court of Appeal.

Once the Court of Appeal has granted its decision, and if an appeal to the Supreme Court of Justice is legally permissible, the same time limits shall be observed.

Legal representation for civil proceedings is mandatory in cases where:

- An ordinary appeal is admissible due to the claim's value;
- An appeal is always admissible, regardless of the amount; and
- Appeals are initially filed in higher courts.

There are two types of extraordinary appeals: the revision appeal and the appeal for the standardization of jurisprudence. The revision appeal may be filed in exceptional cases in which it can be shown that the original decision was, for example, based on forged evidence. The appeal for the standardization of jurisprudence is submitted in order to obtain a homogenous interpretation and application of a specific Portuguese law provision. It is the Supreme Court's duty to ensure that judicial decisions upon similar matters do not differ substantially from each other, to ensure a uniform application of the law.

Under certain circumstances, the parties can also appeal to the Constitutional Court when all ordinary appeals have been exhausted and when the case concerns issues of a constitutional nature.

As a general rule, an appeal does not suspend the effect of the original judgment. However, when the appeal is filed, the appealing party may request the original judgment to be suspended, on the grounds that immediate enforcement of the judgment would cause substantial damage – in which case the appealing party must provide security by means of a monetary deposit, bank guarantee or security bond. The Court can then decide how to proceed.

Interim relief proceedings

Portuguese law provides for, and clearly defines, different kinds of interim measures. They include:

- Provisional measures, which are intended to maintain an existing situation unaltered and avoid prejudicial mutations; and
- Conservatory measures, which are intended to anticipate the decision that the Court will issue in the principal case, to ascertain the applicant's threatened rights.

The Court can issue an interim measure only if the applicant provides evidence that:

- there is strong prima facie case that the right it claims exists (*fumus boni iuris*);
- the respondent has breached such right or is on the verge of doing so;
- such breach is likely to cause irreparable harm, or harm which is not easily remediable;
- there is urgency (*periculum in mora*); and
- the relief sought is proportionate to the detriment of the respondent.

In addition to the general interim relief proceedings, the Civil Code prescribes the following specific interim measures:

- Provisional reversion of possession;
- Suspension of company resolutions;
- Temporary alimony;
- Arbitration of provisional compensation;
- Seizure;
- Embargo on new work; and/or
- Enrolment.

In some cases, the Court may provisionally decide on interim relief requests without holding any hearing and therefore without involving the respondent, i.e. ex parte. In such cases, the courts would re-establish the necessary dialogue (and due process) with both parties in a second phase after the interim measure is rendered. In this second phase, a hearing will be scheduled within 15 days after the order whereby the interim measure is issued. If the respondent files a response, the interim measure will be decided within two months, although in practice, it may take much longer).

All interim relief proceedings are dependent on the respective main proceedings, in which a final decision regarding the initial issues will be made. Following procedural reforms in 2013, it is possible to request the "reversal of the litigation" ("*inversão do contencioso*"), which means that the main issues can be decided within the interim relief proceedings and, if granted, the claimant would not have to file the main action.

The procedural timings vary depending on the measure requested and on the specificities of each case, but ranges from approximately two to 18 months. However, where the proceedings are ex parte (only admissible for cases of embargo on new work), the judge may take just a couple of days to order the relief.

A party can appeal the order granted pursuant to an interim relief application within 15 days of the communication or service of the order granted. Just as for general appeals, an appeal of an interim relief order does not have suspensory effect unless ordered by the court.

When there is a judicial seizure of assets, an enforcement agent (suggested by the applicant and appointed by the court) provides for the sale of the assets and the net price is deposited in a credit institution and held to the order of the enforcement agent, who must communicate it to the court within five days of the sale. Should the auction not realise the required amount, there are specific rules for the following sale attempts for different kinds of assets. For example, if an auction of immovable assets fails, an attempt must be made to sell them through private bids to be submitted in writing to the enforcement agent.

Prejudgment attachments and freezing orders

In Portugal, prejudgment attachments and freezing orders are procedurally deemed to be interim relief proceedings. In fact, some interim measures, such as seizures (also mentioned in the Interim relief proceedings section), have the same effect as a prejudgment attachment or freezing order, and prevent a defendant from dealing with the assets seized.

For a seizure to be granted, the applicant will need to prove the same requirements as all other interim measures, namely the *fumus boni iuris* and the *periculum in mora*.

A seizure request is filed before the Court where the assets are based and can be granted either before or during the hearing of a merits case between the creditor and the debtor. The court will only authorize the apprehension of property (either movable or immoveable assets) valued to the amount needed to cover and ensure the applicant's credit.

Once a seizure order is issued by the court, the seized assets stay under the control of the court through an appointed depositary, who will be liable for any damages caused to the seized assets and/or the debtor during that time. A seizure cannot be requested ex parte.

If the decision on the merits is favourable to the applicant, the creditor will have the right to proceed with a forced auction sale of the assets seized. The provisions related to the enforcement sale apply, in particular in what concerns the auction sale (discussed under the Interim relief proceedings section).

Costs

In all proceedings and without prejudice to the following paragraphs, the parties initially bear their own costs, including all legal expenses.

As a general rule, the losing party shall bear not only its own court costs but also the court costs (judicial fees) incurred by the successful party during the proceedings, as well as 50% of all costs incurred by both parties as compensation.

If the losing party has commenced or continued civil proceedings in gross negligence or bad faith, the successful party can claim damages caused by the counterparty's behaviour.

Court fees vary depending on the amount in dispute and the stage of the proceedings (i.e. first instance, appeal or appeal to the Supreme Court of Justice). In ordinary proceedings for disputes with a value up to EUR275,000 and for the Courts of First Instance, the fees range from approximately EUR102 to EUR1,632. On appeals to both the Court of Appeal and the Supreme Court of Justice, the initial judicial fee is EUR816).

If the value of the claim is higher than EUR275,000, the amount in excess of that figure will be taxed at the end of the proceeding, for each stage. For example, in a EUR4.25 million claim, the initial judicial fee would be EUR1,632 in the Court of First Instance and the balance of the claim value (from EUR275,000 to EUR4.25 million) would be taxed at the end of the proceeding as follows:

First Instance Court fees:

- Initial judicial fee: EUR1,632
- Remaining judicial fee: EUR48,654
- Total: about EUR50,286.00

Second Instance Court fees (in case of appeal):

- Initial judicial fee: EUR816
- Remaining judicial fee: EUR24,327
- Total: about EUR25,143.00

Third Instance Court fees (in case of appeal to the Supreme Court of Justice, only admissible in certain circumstances):

- Initial judicial fee: EUR816
- Remaining judicial fee: EUR24,327
- Total: about EUR25,143.00

At the end of the proceedings, both parties will have to pay the remaining judicial fee unless the court agrees to waive it, which often happens when the dispute is resolved before the final hearing, e.g. through a settlement agreement.

Class actions

Portuguese law allows collective actions to protect certain collective interests, such as public health or consumer rights. There is also a procedure that allows individual claimants to join their claims in a single proceeding.

All citizens are entitled to bring class actions, by themselves or through associations or foundations incorporated to defend the relevant interests. For example, the main associations for consumer protection actions are *Deco* and *Ius Omnibus*.

Class actions are based on an opt-out mechanism. This means that if the Court decides to certify a matter to be treated as a class action, those prospective claimants who do not wish to participate in the mass lawsuit must take positive steps to remove themselves from the class action on receiving notice of it - i.e., they must "*opt-out*" by giving notice to the Court that they decline to participate. Once a specified period of time has passed, all individuals who have not opted-out are considered to be part of the class action and the Court can hear their claims, even if they do not engage with the proceedings.

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Qatar

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Overview of court system

Qatar's courts operate under a civil law legal system. Qatar's legal system is rooted in the Napoleonic Code which was adopted (via the Arab Civil Code) by many countries in the Middle East. Judges are independent of the state and their decisions are taken and implemented in accordance with the law. Hearings in Qatari court proceedings are open to the public unless the court decides of its own accord or at the request of an interested party to hold them in closed session. Case documents, however, are confidential to the litigants. Arabic is the official language in the Qatari courts and all pleadings must be in Arabic (with foreign language documents requiring translation by a court approved translator). While it is extremely rare for witnesses to be required to give evidence in court, the courts will hear evidence given through an interpreter where the evidence of a non-Arabic witness is required.

Qatari civil courts (the Civil Court) have jurisdiction over civil matters, while the commercial matters including corporate, banking, construction and maritime matters are heard and decided before the Investment and Trade Court (the Investment Court). The Investment Court is organized in the following instances:

- the First Instance Court, which comprises:
  - the Lower Investment Court, which hears and decides on all civil and commercial cases where the amount in dispute does not exceed the sum of QAR10,000,000 (c. USD2,747,250);
  - the Higher Investment Court, which hears and decides cases where the amount in dispute exceeds QAR10,000,000; and
  - It also acts as an appellate court, hearing appeals against judgment issued by the Lower Investment Court.
- the Court of Appeal, which hears appeals filed against judgments issued by the Higher Investment Court; and
- the Court of Cassation, which is the ultimate court of appeal in Qatar, and hears appeals filed against judgments issued by the Court of Appeal or the Higher Investment Court, acting as an appellate court.

In addition, there are a number of specialist tribunals. Judgments issued by these specialist tribunals can be appealed to the Court of Appeal within the Civil Court.

Parties doing business in Qatar should also be aware of the Qatar Financial Centre (a business and financial center located in Doha) which, as a part of its business-friendly environment, provides an alternative judiciary in the form of the Qatar International Court (QIC) with respect to disputes arising between entities established within the QFC or between QFC entities and parties outside of the QFC. The QIC, which has a bench formed of internationally renowned common law judges, is designed to hear cases quickly and efficiently. Parties with disputes in Qatar should therefore consider making use of this more modern alternative to Qatari court litigation, if applicable to them.

Limitation

Under Qatari law, the application of limitation periods is usually a substantive law issue and therefore governed by the law applicable to a particular contract or interaction between the parties. Advice should be sought on a case-by-case basis on the applicable limitation period since its expiry can critically affect a party's ability to bring a claim. Where Qatari law is the applicable law in respect of a limitation period, the general position is set out below.

Qatari law also prescribes a range of different limitation periods depending on the specific type of claim in issue. In particular, the position in respect of contractual claims is generally as follows:

- claims which are considered to arise out of a commercial arrangement/activity will have a limitation period of ten years from the breach occurring; and
- claims which are not considered to arise out of a commercial arrangement/activity will have a limitation period of 15 years from the breach occurring.

Procedural steps and timing

Usually, proceedings before the Civil Court take a lengthy time until a final decision is issued and becomes enforceable. However, the proceedings before the Investment Court are much faster, given the nature of the disputes involved. The Investment Court operates on the following procedural timeline:

- **Statement of Claim**: Litigation is initiated when a plaintiff files a statement of claim.
- **Service of Proceedings**: The court ensures the claim is served to the defendant within three days, leveraging digital means to enhance efficiency.
- **Defense Submission**: The defendant must respond with a complete defense, counterclaim, and associated evidence within 30 days of being served.
- **Plaintiff's Response**: The plaintiff is then required to file a rejoinder within 15 days of receiving the defense.
- **Defendant's Counter-Response**: The defendant has an additional ten days to reply to the plaintiff's rejoinder.
- **Extensions**: Though the court may grant extensions, these are strictly limited to a total of 45 days.

A claim is commenced when the claimant files its statement of claim (together with supporting documents). Although representation is not, in theory, mandatory, navigating the court system (which is fairly complex and in Arabic only) is difficult without legal representation and, in practice, parties are almost always represented.

A common and important feature of Qatari court litigation (particularly in respect of complex construction disputes) is the involvement of one or more court appointed expert (selected from an internal panel). Once appointed, an expert will meet the parties, review the case, and prepare a report of their findings. During this time, the court will continue to hold regular hearings to monitor the status of the expert review process.

The parties, individually or collectively, have a right to object to the content of the expert's report. If the court agrees with the objections raised, it may order that the expert revisits its report to address the parties' objections or, alternatively, make an order to appoint a different expert. However, once the court is satisfied that the content of the report is final, it will tend to rely heavily upon it when giving its decision.

It can typically take as long as six months for a judgment to be given in cases before the Qatari Court of First Instance. It can also take more or less time depending on the complexity of the case. With respect to cases heard by the Qatar International Court, a judgment will be issued within 90 days from the date on which the respondent received official notice of the claim, unless the nature of the claim requires one or several extensions, pursuant to Schedule 6 of QFC Law No. (7) of 2005.

Disclosure and discovery

When filing a claim, claimants in the Qatari courts are only required to produce documents that support their claim. However, a litigant is entitled to request that its opponent be obliged to produce relevant documents if:

- it is permitted by Qatari law;
- the document is joint between the parties (i.e. relates to mutual obligations and rights between them); or
- if its opponent relies on it at any point in the proceedings.

There are often evidentiary difficulties for a party seeking disclosure of a document as it has to prove that the document exists and that it is in the possession of its opponent.

Default judgment

Where the statement of claim has been personally served on a defendant and that defendant does not submit any documentary pleading in response to the statement of claim or otherwise fails to appear in court after having been summoned, the court will give its judgment in the absence of the defendant. The judgment will therefore be based on the court's review and consideration of the evidence produced by the claimant alone. It is worth noting that as a means to compelling the defendant to participate in the proceedings, the defendant will be served with the summons personally or at its residence. If the bailiff is unable to locate the defendant, the bailiff will deliver the summons to the defendant's representative, employee, spouse, relative or in-law. If the summons is not served on a defendant who subsequently fails to participate in the proceedings, the court will adjourn the case to a subsequent session and re-notify the defendant of the proceedings. Furthermore, even if service has been perfected on the defendant, there is scope under Qatari law for a party to have such judgments reconsidered in exceptional circumstances.

Appeals

There are two levels of appeal in Qatari court proceedings: first to the Court of Appeal and secondly to the Court of Cassation. Judgments of the Court of Appeal are capable of enforcement by the judgment creditor notwithstanding any further appeal by the judgment debtor. Enforcement action is dealt with by the separate Court of Execution. While the right of appeal to the Court of Appeal is automatic and thus the majority of cases are appealed, the right of appeal to the Court of Cassation is limited to circumstances where there has been an error of law or a procedural irregularity.

Any party seeking to appeal a judgment of the Qatari civil court should ensure that it does so within the applicable time limit: ie 30 days for an appeal to the Court of Appeal and 60 days for an appeal to the Court of Cassation with respect to civil cases and 30 days for commercial cases. On average, it is common for the Court of Appeal and Court of Cassation to take 4-6 months to issue judgment in relation to an appeal, but this can vary depending on the caseload of the court at the time.

Prospective claimants should be conscious that the broad rights of appeal available in the Qatari courts can add considerably to the cost and delay in litigating in the country. This is similar to other legal systems in the Middle East.

Interim relief proceedings

Interim relief proceedings are not available in the Qatar courts. However, interim relief may be granted by way of a precautionary attachment to freeze the debtor's assets.

Prejudgment attachments and freezing orders

In Qatar, prejudgment attachments are referred to as precautionary attachments. In summary, a precautionary attachment can be sought from the Court of First Instance either as a precautionary measure or as an enforcement measure.

A precautionary attachment may be granted in circumstances where a party can prove: (i) that it is owed a due and payable debt; and (ii) the debtor is at risk of dissipating its assets and/or is a flight risk.

An application for a precautionary attachment is an *ex parte* application which requires substantive proceedings on the merits to be filed, by way of a claim, within two weeks of the application being granted.

Any fixed and/or movable assets of the debtor are liable to attachment, including:

- licenses and registrations (including its trade/commercial license and accounts with the labor/immigration authorities);
- fixed assets (including real property);
- moveable assets (including bank accounts, plant, office furniture, machinery and securities); and
- receivables owed to the debtor from third parties in Qatar (including debts and liabilities).

Once an attachment order is granted, the court will write to various institutions where a debtor may have assets, and the governmental bodies who regulate them. Those institutions include:

- the central bank;
- the real property registration authority;
- the commercial licensing authorities;
- the vehicle registration authorities; and
- the stock exchange.

In its letters, the court will confirm the value of attachment and request the relevant institutions to confirm the debtor's assets that are held by and/or registered by them. The court will then ask for attachment to take place over the assets to the relevant value.

The court can also attach specific assets that the applicant believes are in the possession of a third party but are owned by the debtor. This includes instances where the debtor has goods in the warehouse of a third party or receivables/debts owed to it under a contract or some other instrument. The difficulty with placing an attachment on such assets is an evidential one; not only must the applicant be aware of the existence of the relevant assets/debts/receivables, it must also prove to the court that the assets belong to the debtor.

In circumstances where a debtor's assets are not sufficient to satisfy the value of the attachment, it is possible that some or all of its assets will be subject to attachment (to the extent they are discovered) regardless of whether or not they have any monetary value (for example, an empty/overdrawn bank account or plant/machinery whose depreciation value is zero may nevertheless be subject to attachment).

The effect of an attachment is that assets are effectively frozen. For example, bank accounts are frozen and cannot be operated by their holder, and moveable assets and/or property are affixed with signs or seals to identify that they have been attached and cannot therefore be used.

It is also possible for a party to seek to impose travel bans on the authorized signatories and/or managers of the debtor. The individuals at risk will usually be those that are listed on the commercial license of the debtor.

There are two ways in which a party may lift an attachment on its assets:

- by providing security to the Court Treasury. Once this security is provided, the attachment can be transferred to the security, and so released from the debtor's assets. The form of security is at the discretion of the court and can include:
  - a payment into the Court Treasury for the amount of the attachment. Such payment can be made by a third party, such as any other debtor entity on behalf of the debtor; and/or
  - the authorized signatory(ies) and/or manager(s) of the debtor depositing their travel documents with the Court.
- by successfully challenging the attachment. Challenges to an attachment proceed through the following tiered appeal system:
  - an initial grievance before the court that granted the attachment. It may be possible to successfully discharge a precautionary attachment after a successful grievance which usually takes three to four weeks to resolve (assuming that service of proceedings is affected swiftly);
  - an appeal before the higher Court of Appeal; and
  - an appeal before the Court of Cassation.

An attachment, if granted, remains in place while the challenge to the attachment is being considered, which can take up to a year to conclude.

It is not possible for the debtor to claim damages incurred as a result of the attachment.

Costs

Court fees (including experts' fees) are generally recoverable by the successful party in Qatari court proceedings, but only a nominal amount will be awarded for lawyers' fees. Where neither party has been entirely successful in their claims, the court may decide that each party shall bear its own costs. The prevailing party may be ordered to pay some or all of its costs if:

- the claim was undisputed by the defendant;
- the prevailing party caused unnecessary costs to be incurred; or
- the prevailing party failed to provide its opponent with the documents (or its contents) which the court deems to be conclusive in the

matter.

The court fees payable for claims vary depending on the nature and value of the claim. The applicable court fees are also routinely amended and are not readily accessible on a centralized court website. The best source of information on current court fees is local counsel, who will be able to search the relevant court website.

Class actions

Class actions are not recognized under Qatari law or the Qatari courts procedure.

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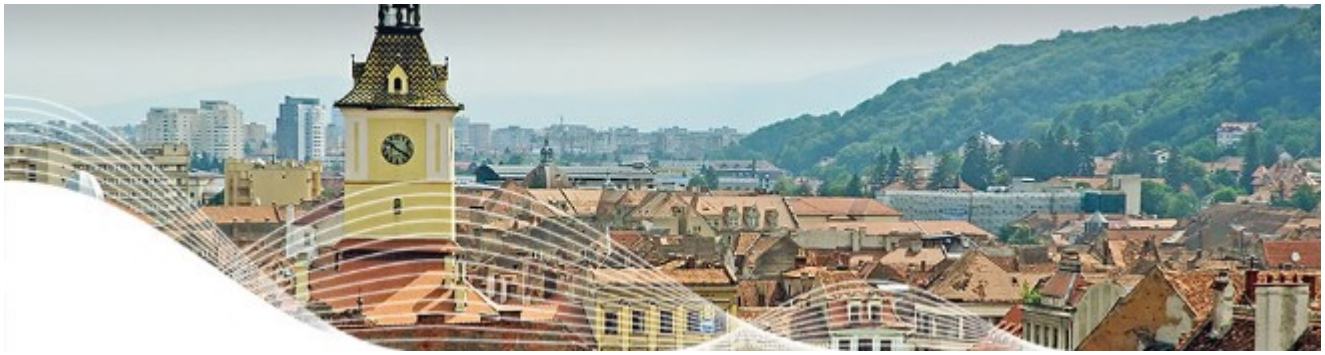

Romania

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Overview of court system

The Romanian legal system follows a civil law system. The courts of law are organized hierarchically as follows:

- Courts of first instance (covering the geographic spread of the relevant cities in the country);
- Tribunals (42 tribunals - one in each county plus Bucharest);
- The Courts of Appeal (15 courts); and
- The High Court of Justice (the highest court in the judicial system).

There is also a Constitutional Court to settle conflicts between public authorities and generally safeguard the Romanian Constitution. The Constitutional Court is not considered part of the judiciary, but rather as a separate and distinct public authority.

Trials are only conducted in Romanian. In the case of a foreign party, the presence of an interpreter is mandatory. The lower courts are bound by the decisions of higher courts.

Limitation

The general limitation period in Romania for pecuniary civil claims is three years, but there are several exceptions, depending on the nature of the rights in question. Limitation periods usually start running from the moment when the claim is due and payable.

In certain situations, different limitation periods will apply. For example:

- for property claims, the limitation period is ten years; and
- for insurance and reinsurance claims, the limitation period is two years.

Procedural steps and timing

Civil litigation begins when the plaintiff files the statement of claim at court. Legal representation is not mandatory, either in the courts of first instance or on appeal.

Generally, the jurisdiction of the courts is determined by the domicile of the defendant, although there are other relevant criteria for certain types of disputes.

The proceedings are usually divided into three main phases:

1. the written phase;
2. the evidence and discovery phase; and
3. the final pleadings phase.

THE WRITTEN PHASE

During the written phase, the plaintiff's statement of claim is randomly assigned to a judge for a prima facie examination. If the judge finds the statement to be lacking any essential formal elements (such as the full names and addresses of the parties, or the signature, etc.), the court will notify the plaintiff who will have ten days to amend the statement of claim. Should the plaintiff fail to do so, the claim will be dismissed. The purpose of this procedure is to prevent incomplete claims from being brought before the courts. The annulment decision does not have a *res judicata* effect - a new statement of claim can be brought forward, if the limitation period has not expired.

If the judge is satisfied that the statement of claim meets all the necessary formal requirements, the defendant will be served with the statement of claim by the court. The defendant is then required to submit its statement of defense and (if applicable) a counterclaim within 25 days. This deadline cannot be extended, even in complex cases. However, in urgent cases, the court may shorten the time limit for the statement of defense. The claimant may file an answer to the statement of defence within ten days of the latter being filed at court and served on the defendant.

After the written pleadings have been exchanged, the judge sets the date for the first hearing, the recommended time for which is 60 days from this date. However, depending on the workload of the court and/or the urgency of the matter, the first hearing may be set outside of the recommended period.

THE EVIDENCE AND DISCOVERY PHASE

At the evidence and discovery phase, the judge decides which of the pieces of evidence proposed by the parties is relevant and pertinent to the dispute and proceeds to its management. The judge may, *ex officio*, order the parties to the dispute, third parties or other public authorities and institutions to submit any other evidence that the court deems necessary, even if these parties do not agree with the court's assessment.

THE FINAL PLEADINGS PHASE

Once the evidence and discovery phase is complete, the parties orally present the final pleadings at the hearing on the merits of the case. Written notes may be submitted and exchanged between the parties during trial and notes may also be filed at the court before a judgment is rendered.

The judge may give judgment at the end of the final session or he may reserve judgment to a later date. The detailed reasons for the judgment will be drafted and served on the parties later (it is recommended that the detailed judgment be served within 30 days from the date of the decision but, in practice, this delay is not always observed).

Timeframes for each phase of the proceedings vary considerably depending on several factors, including the complexity of the case, the evidence to be produced, the workload of the court, the conduct of the parties etc. Typically, the written phase takes between 6 and 12 weeks. Upon completion of the written phase, a first hearing is listed to take place within two to six months. One can expect it to take a further 6 to 12 months for judgment to be given by the court of first instance depending on the complexity of the evidence which will be administered. In total, the estimated timeframe between the service of the claim and the first instance judgment for simple civil law claims is between 12 and 18 months.

Disclosure and discovery

Evidence is primarily presented by the parties in their written submissions (the claimant in the statement of claim and the defendant in the statement of defense). Of the evidence presented, the judge may accept only that which he deems admissible and necessary for the dispute. The role of the court is inquisitorial (i.e. the court is actively involved in the investigation of the facts of the case), and the judge may therefore order the parties to produce any evidence which he or she deems necessary, regardless of whether or not the parties consent to such disclosure.

The parties must each produce all evidence in support of their claim. If important documents are not disclosed by the opposing party, or they are held by a third party, the court may (on its own initiative or at the request of a party) order the respective party to disclose them. If the parties refuse to disclose such documents, or if it is proved that they have concealed such documents, the court may consider the affirmations of the interested parties concerning such documents as being proved. If the evidence has a special legal regime (state secrets, trade and business secrets, professional secrets etc.), then it can be submitted in a confidential form for the other party and be fully disclosed only to the judge.

After the judge approves the evidence presented by the parties in their written submissions, the parties may agree to conduct a separate

evidence production process whereby each party presents the evidence that it considers necessary to determine the litigation. The court supervises the process by resolving any objections, incidents or additional requests that arise raised during the production of evidence. This procedure is a faster alternative to produce evidence, although, in practice, it is rarely used.

Default judgment

Failure by a party to respond to a claim by a party does not prevent the judge from awarding judgment. The absence of the defendant is not considered an admission of the claim by that defendant. The claimant still needs to prove its case. Regardless of the defendant's lack of response, the judge is required to consider the merits of the claim before granting the judgment.

If both parties fail to take action in the proceedings but neither of them requests default judgment, the proceedings will be suspended. Default judgments are identical to any other judgments and are subject to the ordinary and extraordinary means of appeal.

Appeals

There are two types of challenges that can be brought against a court decision: ordinary and extraordinary.

As a rule, the interested party can appeal the first court's decision within 30 days of the decision. Submitting the appeal will suspend the enforcement of such decision. The appeal allows the judges to fully reconsider the case, both on the merits and on the facts.

The appeal will be judged by the superior court. In particular:

- judgments of a Court first instance can be appealed to the Tribunal with territorial jurisdiction;
- judgments of the Tribunals can be appealed to the Court of Appeal with territorial jurisdiction;
- judgments of the Court of Appeal can be appealed to the High Court of Justice.

In certain cases, the parties may also seek the following extraordinary appeals:

- a second appeal (recourse), generally admissible in all types of cases, except those expressly prohibited by the law (such as labour law, inheritance and asset division) and it can only be filed for alleged breaches of legal principles or procedural rules expressly determined by the law;
- revision of the decision is only permissible when expressly provided by law, such as when the material object of the judgment no longer exists or when the judge, witness or expert of the case have been criminally convicted for criminal acts in relation to that specific case; or
- annulment of the decision, which can only be sought in cases of certain serious procedural breaches.

The second appeal will be determined by a higher court than the court that rendered the original decision. The court that issued the decision being reviewed or annulled will determine any revisions or cancellations. These extraordinary remedies may be exercised simultaneously (i.e. they are not mutually exclusive).

Usually, it takes about six to nine months from filing the appeal to the appeal's decision.

Interim relief proceedings

Interim relief can be granted in order to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the case is provided. For instance, by means of interim relief, the court will determine the children's situation until a final decision on the divorce of the parents is reached or will suspend the effect of an administrative act until the court will rule on the validity of such act.

As a general rule, interim measures are granted only when the proceedings on the merits of the claim have already been initiated (i.e. there is an ongoing case) or, in cases expressly provided by the law, prior to the initiation of the proceedings.

Legal representation by an attorney is not mandatory in interim relief proceedings. A claim for interim measures must meet the same formal requirements as any other claim in court. However, it is not subject to an extensive written phase of the litigation, as the procedure needs to be resolved urgently. The court's decision does not stand as *res judicata* on the substantive claim, so it does not affect the merits

of the dispute between the parties.

To obtain the interim relief, the claimant must show that the initial analysis of the claim is in their favor and that there is urgency for the protective measures to be taken.

An interim relief decision can be obtained typically in two to eight weeks, with appeals lasting a further two to four weeks. A decision granting or rejecting an interim relief application is only subject to appeal within five days of the decision. An appeal does not suspend the effects of an interim measure.

Prejudgment attachments and freezing orders

In order to prevent the defendant from trying to dispose of his assets prior to a final judgment, Romanian courts can grant several types of provisional measures. These provisional measures and the interim relief referred to above are both special proceedings and share some commonalities, such as their temporary nature. However, under Romanian law, distinct procedures are required for (i) provisional measures ordered to prevent the defendant from trying to dispose of his assets prior to a final judgment; and (ii) interim relief ordered to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the case is granted.

Among the provisional measures that Romanian courts can grant, the freezing of immovable assets and the freezing of bank accounts are the most important. In general, the same court that has jurisdiction over the substantive claim is the one that can grant provisional measures.

Although each measure has individual admissibility conditions, there are several features common to them all:

- the judge has discretion in granting the temporary measure, taking into account:
  - the risks associated with delay; and
  - the initial analysis of the claimant's case;
- in most cases, the law requires the claimant to provide a security deposit, which can vary in amount, up to 20% of the claim or, in exceptional cases, up to 50% of the claim;
- the interested party must provide proof that the claim was filed before the filing of the provisional measures request. Accordingly, these provisional measures cannot be requested pre-action; and
- the measures granted by the court are usually for a limited time period, until a final decision is rendered on the merits of the case.

The claimant may request the seizure of any movable or immovable assets belonging to the defendant (with limited exceptions such as personal or domestic use assets which are necessary for the daily living of the defendant or his family, letters, photos, etc.) or the freezing of bank accounts. It is not necessary for the claimant to identify in their request either the assets or the bank accounts.

The procedure is resolved initially without summoning the parties. Any appeals must be filed within five days of the decision, and it is mandatory for the court to summon the parties for the hearing of the appeal. Claimants can be held liable for damage caused to the defendant by the seizure should the court subsequently find that the attachment should not have been granted.

Costs

The costs of litigation in Romania include court fees (approximately ranging between 1% and 10% of the value of the claim), fees related to obtaining evidence (e.g. expert reports) and lawyers' fees. As a general rule, court fees are paid by the claimant, fees related to the production of evidence are paid by the party that proposed the evidence, and both parties pay their respective lawyers' fees.

In some cases, the court may order the losing party to cover the opposing party's litigation costs. If the position of one of the parties is fully accepted, the court can only reduce the amount payable by the losing party for the successful party's lawyers' fees when they are considered disproportionate to the complexity and the value of the case.

Class actions

Romanian law does not provide for a specific procedure for class actions. However, multi-claimant litigation is possible in certain cases, where the object of the claim is a common right, or the claimants' rights have a common cause or a close connection. Moreover, certain

bodies such as trade unions or consumer associations have the right to stand as claimant on behalf of multiple individuals in specific cases.

If a court is faces multiple claimants, the judge may direct them to select a common representative. If the claimants are unable to choose a representative, the court may appoint one on their behalf.

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Overview of court system

Russia is a civil law jurisdiction and its judicial system consists of three main court branches:

- state commercial (*Arbitrazh*) courts. These courts resolve commercial, civil and administrative disputes between legal entities or entrepreneurs and have exclusive jurisdiction over certain types of disputes (e.g. corporate and bankruptcy matters). For a creditor of a Russian debtor, proceedings in state commercial courts are usually the preferred option (as compared to litigation in foreign courts or arbitration). The process is reasonably straightforward, fast and cost effective;
- courts of general jurisdiction. These courts adjudicate:
  - civil non-commercial disputes;
  - criminal cases; and
  - administrative cases, which do not arise from commercial activities of companies (e.g. violations of fire safety, labor regulations etc.); and
- constitutional courts. These courts resolve issues regarding the constitutionality of laws and treaties.

The Supreme Court is the highest judicial authority for state commercial courts and courts of general jurisdiction.

Limitation

The standard limitation period for submitting a claim in Russia is three years from the day when the claimant became aware, or should have become aware, of both the violation of its right and who the appropriate respondent is. There are certain shorter limitation periods (e.g. for challenging a voidable transaction).

Procedural steps and timing

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure for commercial disputes in state commercial courts.

There is no requirement for representation by an attorney (i.e. an *advocate* registered with one of the Russian regional bars) in state commercial courts. However, legislative amendments expected to enter into force by 1 October 2019 will require representatives to have a higher legal education or a degree in law, with some exceptions outlined in the legislation (e.g. for CEOs, patent and trademark attorneys in IP disputes and bankruptcy managers in the performance of their duties in bankruptcy cases).

For certain types of disputes specified by law, including claims for the recovery of funds, a claimant should first send the respondent a mandatory pre-trial demand letter. Generally, 30 days after sending the letter, the claimant may submit a statement of claim with supporting documents to the relevant state commercial court. If there is no requirement to send a pre-trial demand letter, the claimant may submit a statement of claim without the need to engage in pre-trial correspondence.

Usually, the claim is submitted to the court with jurisdiction over the respondent's registered address. Once the claim is registered with the court, the judge has five business days to check whether the documents comply with the procedural rules for initiating proceedings specified by the *Arbitrazh* Procedure Code of the Russian Federation (i.e. the statement of claim contains all the information required by the *Arbitrazh* Procedure Code, including information about the subject-matter and parties to the case; all the documents required by the *Arbitrazh* Procedure Code are attached to the claim, etc.). If the documents are in order, the judge initiates the case and schedules a date for the preliminary (procedural) court hearing. The hearing is usually scheduled for a date one month after the commencement of the proceedings.

At the preliminary hearing, the court schedules a hearing based on merits. It is usual that several hearings take place before a final judgment is made.

In a straightforward case, the proceedings in the court of first instance may take approximately four to six months. However, proceedings may take longer, depending on the court's workload and the case management of the proceedings by the parties.

There are also fast-track procedures whereby the court does not conduct a hearing and will make a ruling based on documentary evidence, these are (i) a court order; and (ii) summary proceedings. Such procedures are applicable to small claims below RUB500,000 (approximately USD7,500) or RUB800,000 (approximately USD12,000) or claims where the respondent had acknowledged its obligations but failed to perform them (e.g. the respondent acknowledged a debt in writing but failed to repay it). Simplified proceedings may take up to ten days (in the case of a court order) or up to two months (in the case of summary proceedings).

Disclosure and discovery

In Russia, there is no extensive disclosure more typical of common law jurisdictions. Although parties must substantiate their statements with evidence, the parties are free to determine which evidence they would like to use.

The proceedings do not include court-ordered disclosure or discovery as a separate stage. Nonetheless, courts may request additional documents from the parties to the proceedings or third parties. If a party to litigation is unable to obtain the necessary evidence, it may ask the court to order the provision of evidence by another party or third parties (e.g. state authorities, banks, etc.). However, fishing expeditions are not allowed and the requesting party should indicate the following in its application: what specific evidence it seeks; the location of the evidence; relevance to the dispute; and why it cannot obtain such evidence.

State commercial courts favor documentary evidence. While witnesses of fact are admissible, they are rarely used. The parties may provide the court with reports of expert witnesses or ask the court for a court-appointed expert to conduct their expert review.

Default judgment

All parties are responsible for adhering to the relevant procedural actions and, as such, are expected to be proactive in the proceedings.

If a respondent, who has been duly notified of the proceedings, does not appear at the court hearing on the merits, the court may adopt a judgment in the respondent's absence. The claimant, however, would still need to satisfy its burden of proof and present the necessary evidence to the court.

The respondent is entitled to appeal the judgment in the usual way (see further details under Appeals); however, the respondent cannot submit new evidence to the court of appeal unless it proves that it was unable to do so due to circumstances beyond its control.

If the claimant fails to appear at the court hearing twice without filing a motion to try the case in its absence and the respondent does not require the court to consider the case on its merits, the court may dismiss the claim without consideration.

Appeals

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure of appeal in state commercial courts.

Generally, a judgment of the state commercial court may be challenged as follows:

- an appeal in the state commercial court of appeal: the parties have one month to appeal a judgment in the court of appeal. The decision will not enter into force until the expiry of such period or until the court of appeal issues its decision. Proceedings in the court of appeal usually range from two to three months;

- a cassation appeal in the state commercial court of a district: once the resolution of the court of appeal is issued, the parties have two months to challenge it at the court of cassation. Usually, proceedings in a court of cassation can take between two to three months;
- a review by the Supreme Court: the Russian Supreme Court is the court of extraordinary instance which deals with major misapplications of substantial and procedural laws by lower courts. Leave is required from a judge of the Supreme Court for a case to be considered, either by:
  - the Economic Collegium of the Supreme Court: second cassation appeal, which may be submitted within two months from the date of the judgment of the state commercial court of a district. The second cassation appeal is aimed to review the substantial violations of law that have affected the outcome of a case;
  - the Presidium of the Supreme Court: supervisory review petition, which may be submitted within three months from the date of judgment of the Supreme Court judge.

Since the Presidium of the Supreme Court is the last appellate instance, it only considers appeals based on extraordinary grounds.

Interim relief proceedings

Interim relief measures aim to secure enforcement of a future judgment and to prevent harm to the subject of the case or to the applicant.

The law does not provide an exhaustive list of injunctive relief. Injunctions may include, for example, freezing monetary assets, securities, rights to real estate and moveable assets of the respondent (for further details see Prejudgment attachments and freezing orders) or prohibiting the respondent or other persons from committing certain actions concerning the subject of the dispute.

An application for injunctive relief may be submitted simultaneously with the statement of claim or in the course of proceedings before the judgment is rendered by the court.

Upon an application by the claimant, a state commercial court may grant injunctive relief sought by the applicant. The court will consider an application no later than the next day after the submission of the application to the court. There is no requirement that the application should be signed by an attorney (*advocate*).

The court may grant an injunction in circumstances where it finds it appropriate, relevant to the dispute, and necessary to ensure the status quo. An injunction is granted *ex parte*. The respondent may challenge an injunction within a month from the date of the court ruling granting injunction. Representation by an attorney in interim relief proceedings is not mandatory. However, legislative amendments expected to enter into force by 1 October 2019, will require representatives to have a higher legal education or a degree in law (with some exceptions outlined in the legislation).

In practice, state commercial courts are reluctant to grant injunctive relief.

Prejudgment attachments and freezing orders

Pre-judgment attachments / freezing orders are categories of interim relief intended to secure the assets before the statement of claim is submitted to the court. The respective application may be filed to the court, for example, at the claimant's registered address, or at the location of monetary assets or other property in respect of which the preliminary relief is requested.

The application should specify the subject-matter of the case, the reason for seeking the preliminary injunction and the relief sought, for example: attachment of respondent's property or funds in a bank account or transfer of the item in dispute into the custody of the claimant or a third party. The respondent's money and other assets may be subject to a freezing order.

When submitting such application, the applicant is usually required to also provide counter security (by way of a bank guarantee, deposit etc.) in the amount of the relief sought. A preliminary injunction is granted *ex parte* and state commercial courts are reluctant to grant preliminary injunctive relief even if sufficient counter security is provided by the applicant

If the preliminary injunctive relief is granted, the claim on the merits must be submitted to the court within a period set by the court, which will be no more than 15 days, otherwise the injunction will be lifted. If the claim is not brought within the stipulated time period, or the claim is later dismissed on the merits, the claimant will also be liable for the damages of the respondent arising from the injunction.

Costs

The costs of litigation in Russia can be divided, practically speaking, into court fees (state duty, expert fees, etc.) and legal fees.

Court fees tend to be nominal; however, they depend on various factors, such as, the amount of the claim, the nature of claim, and the involvement of experts. State duty ranges between RUB6,000 (approximately USD100) for non-pecuniary claims and a maximum amount of RUB200,000 (approximately USD3,000) for state duty monetary claims.

The party against whom the judgment was made should reimburse the opposing party's court fees. Reimbursement for legal fees is also possible. In practice, however, it is often the case that only a fraction of the actual legal fees is reimbursed.

Class actions

In Russia, the concept of class action and the respective procedure varies depending on the court:

Class actions in state commercial courts

Although class actions are provided for in the Arbitrazh Procedure Code of the Russian Federation, there are only certain limited circumstances when a class action may be brought in a state commercial court, these being:

- corporate disputes;
- disputes related to activities of the securities market professional participants and
- claims of persons who are parties to the same legal relationship from which the dispute arose (e.g. disputes related to one land plot, claims of bank account holders to the defaulted bank, etc.).

In the above-mentioned cases, a group of persons may join the claimant acting on behalf of the group. At least five persons must join the claim in order for it to qualify as a class action (Article 225.10(2) of the Arbitrazh Procedure Code of the Russian Federation).

The state authorities (e.g. prosecutors or the federal service for protection of consumer rights) and organizations may bring claims "for the protection of the general public" (rather than in the protection of specific individuals).

However, in practice, the above-mentioned types of actions are not widely used in Russia.

Class actions in courts of general jurisdiction

From 1 October 2019, individuals will be able to defend their collective interests through class actions in the most common disputes in areas such as consumer protection, labor relations, real estate, shared participation and construction.

A class action may be brought by a selected representative of a group of at least 20 members with a similar claim or, if permitted by law, by another party (such as a public consumer association). Group members can change their representative, for example, if the representative decides to leave the group.

Under the new rules a lawsuit will be considered if all of the following are present:

- The same respondent
- Common or similar claims of persons comprising the group
- Similar factual circumstances
- The same method of protecting violated rights.

Class actions fall under the exclusive jurisdiction of courts at the respondent's registered address in order to prevent forum shopping.

Information on the filing of a class action lawsuit must be published in the media so that new claimants can join the lawsuit.

Saudi Arabia

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Overview of court system

Saudi Arabia is a civil law jurisdiction that is based on Islamic law, otherwise known as Sharia law. Sharia law, as applied in Saudi Arabia, is not a single codified system of law, nor has it a single code of interpretation in line with Sharia principles. Rather, its laws and principles can vary between the different schools of thought of Islamic law. There are four major schools: Hanbali, Hanafi, Shafi'I, and Maliki, and Saudi courts and judicial committees generally apply the interpretation of the Hanbali School. The Saudi government, from time to time, issues laws, rules, and regulations with the objective of supplementing Islamic law. In the event of a conflict between Islamic law and government rules and regulations, Islamic law will generally prevail. Sharia law applies in relation to civil and non-codified criminal matters. Other aspects of law, such as commerce, government matters, finance, labour and investment are governed by several statutes and codes.

Saudi Arabia does not have a system of binding judicial precedents, meaning that the courts do not have to follow the earlier decisions of other courts or authorities. Judicial precedents are merely persuasive sources rather than being binding on judges or arbitrations when making their decisions. Therefore, a very broad discretion is given to judges and arbitrators to state, interpret, and apply the principles of Sharia law, rather than considering one single codified law. There is also no comprehensive system of reporting cases in Saudi Arabia. However, the Saudi judiciary publishes from time to time "*judicial principles*" that may operate as authoritative rules to be followed by judges in concluding their judgments.

All proceedings are conducted in Arabic and all non-Arabic documents must be translated.

The court structure in Saudi Arabia is divided into two main branches:

- first, there is the public judiciary which is supervised by the Supreme Judicial Council. The public judiciary includes: (i) First Instance Courts; (ii) The Court of Appeal; and (iii) the Supreme Court. The Supreme Court is not yet fully functional and therefore it is not currently reviewing all types of cases. To date, it is only reviewing commercial cases and serious criminal cases, carrying severe sentences (e.g. death penalty). The First Instance Courts are divided into sub-categories of specialist court which include the General Courts, Commercial Courts, Penal Courts, Labour Courts and Personal Status Courts.
- secondly, there is the administrative judiciary (Board of Grievances). This includes: (i) First Instance Administrative Courts; (ii) Courts of Administrative Appeal; and (iii) the Administrative Supreme Court. These courts include Disciplinary Circuits and Administrative Circuits.

Alongside the two main judicial branches, there is also a semi-judicial branch which examines specific specialized disputes. These consist of various judicial committees within government ministries, such as:

- the Committees for Resolution of Securities Disputes;
- the Zakat & Tax Dispute Committee; and
- the Banking Disputes Settlement Committee.

Limitation

In general, limitation periods for civil claims are not applied in Saudi courts, as under Sharia law, a right to claim is not waived due to the passage of time. However, there are some exceptions where certain laws impose limitation periods such as the Commercial Maritime Law, Board of Grievances Law and Labour Law.

Procedural steps and timing

In the public judiciary branch, the claimant should initiate proceedings by filing a claim online through the Ministry of Justice's website. This must state the nature of the claim, the demands, and list the supporting documents that will be provided. All documents must be in Arabic. Usually, once an application is submitted, the court will take up to three weeks to review the application. The court will review the application to ensure all information and documents are provided. Once confirmed, the claimant must then visit the court within ten days to confirm the filing of the claim and have the case referred to a judicial circuit. The claimant will also receive the hearing date which will usually be between two weeks and three months of this visit to court. The court will then summons the defendant through the Summons Department which has started to use electronic methods, or alternatively the claimant can summon the defendant in person or through the post office. The time between each hearing session varies from case to case but, generally speaking, parties can expect there to be one or two months between each hearing for real estate cases, two to four weeks for family and criminal cases, and three to six weeks for commercial cases. When the court makes a decision, both parties must hear the judgment and they will then receive copies of the judgment in writing. Parties may appeal the judgment, however this must be done within 30 days.

In Saudi courts, the parties must either attend the hearings and represent themselves, or authorize individuals or attorneys to attend on their behalf and represent them (provided that an official notarized power of attorney is obtained). Representation by an attorney is therefore not mandatory in Saudi courts, all individuals have the right to defend themselves without the need to appoint an attorney or representative.

Disclosure and discovery

Disclosure and discovery in Saudi Arabia is more akin to other civil law jurisdictions, and therefore differs from the approach taken in Anglo-Saxon jurisdictions. Sharia law requires the claimant to prove their claim rather than obliging the defendant to disclose or build evidence. A judge may ask either party to disclose documents, but this request is not in the form of an order that implicates penalties in case of non-cooperation.

The claimant may submit any form of evidence. However, evidence under Sharia law is divided into different categories and levels. The judge has the right to decide whether disclosure or evidence will be accepted or not.

Default judgment

If (i) the defendant or their representative is notified of the date of the hearing; (ii) the defendant or their representative gives the court a memorandum of defence prior to the scheduled hearing of the case; or (iii) the defendant appears at any of the hearings and then fails to appear again, the court shall rule on the case and the judgment shall not be deemed "*in absentia*" with respect to the defendant.

If the defendant or their representative is not notified of the date of the first hearing and the defendant fails to appear, the first hearing shall be postponed to a subsequent hearing of which the defendant shall be notified. If the defendant fails to appear again and again they were not notified directly, the court shall rule on the case and its judgment shall be considered "*in absentia*" with respect to the defendant.

The defendant has the right to appeal to the Court of Appeal within 30 days from the date of notifying the defendant of such a judgment.

Appeals

There are First Instance Courts in almost all the provinces and cities in Saudi Arabia in order to facilitate the conduct of proceedings for individuals. Courts of Appeal are located in all the 13 provinces in Saudi Arabia. The Supreme Court is based in Riyadh.

A judgment of the First Instance Court can be appealed within 30 days from the date the written judgment is issued (which is usually different from the date of the final hearing at which the parties are informed of the judgment). If none of the parties appeal, the judgment becomes final after 30 days. All judgments accepted by both parties become final immediately.

In practice, the appeal court may take up to three months to review the case and make a decision.

Interim relief proceedings

In Saudi Arabia, interim relief proceedings are referred to as "summary cases", and the requests made under such proceedings are referred to as "summary requests". The court with jurisdiction over the subject matter of the main dispute has jurisdiction to grant interim measures in respect of urgent matters related to the main dispute, where the lapse of time may cause an irreparable harm. Types of interim measures include (as stated under Article 206 of the Civil Procedures Law):

- "cases of inspection to establish a condition" (these are cases where the judge is required to inspect the condition of an asset so, for example, a judge may visit and inspect a property to provide an official monetary valuation of the real estate at that particular time);
- cases of an injunction banning travel;
- cases of an injunction banning interference with possession and recovery of possession;
- cases of suspension of new actions;
- cases requesting receivership;
- cases relating to daily wages; and
- other cases deemed urgent by law.

By law, if a summary request is sought before the main action has been commenced, a judgment on these urgent matters should always be followed by a claim on the merits. In practice, the claimant usually files the main case and then subsequently files the request for a judgment on urgent related matters. The hearing for a summary request shall be within 24 hours from submitting the request, however in practice it may take longer. The law does not specify a maximum period through which a decision on the summary request should be issued.

The party can appeal the interim relief judgment within 10 days of the notification of the judgement to the parties.

As in ordinary proceedings before the Saudi courts, representation by an attorney in these urgent related matters is not mandatory. Every individual has the right to defend themselves without the need to appoint an attorney or legal representative.

The claimant is required to provide a financial guarantee to the court in case the claim proves to be incorrect. The amount for any guarantee is subject to the judge's discretion.

Prejudgment attachments and freezing orders

Saudi law does not explicitly categorise prejudgment attachments, such as freezing orders, as a type of interim relief. However, Saudi law gives judges a wide discretion as to what can be granted as interim relief, subject to the conditions listed under the Enforcement Law, which completes and supplements the application of the Civil Procedures Law. In the circumstances, (i) when the debtor has no established residence in the Kingdom; or (ii) when there is a risk of dissipation of assets, a claimant may make an application to the judge hearing the main claim, asking the judge to attach or freeze a defendant's asset(s). Such application may be made during the consideration of the main claim, or immediately before proceedings are commenced. However, it is extremely rare for this type of application to be made before the judge hearing the main claim.

In practice, attachments are ordered by the enforcement courts. In other words, in circumstances (i) and (ii) referred to in the preceding paragraph, Saudi judges usually seek to expedite the main proceedings and provide a final judgment as quickly as possible. Accordingly, claimants usually first establish their claims and obtain a judgement on the merits, and then they seek to attach or freeze the defendant's assets before the enforcement courts. As per the Enforcement law, the enforcement judge would most likely entrust the defendants with the custody of the attached assets on the condition of providing a guarantee or solvent guarantor. If the defendant refuses to retain the attached assets under their custody, or fails to provide a security or guarantor, the judge shall appoint a certified guardian to keep the attached assets under his / her custody.

According to the Enforcement Law, all of the debtor's assets shall guarantee their debts. However, attachment of the debtor's assets shall not apply to the following:

- assets that are owned by the Kingdom;
- the residence of the debtor and their dependents, unless it is pledged to the creditors;

- means of transport of the debtor and their dependents, unless it is pledged to the creditors;
- wages and salaries, except for:
  - one-half of the total wage or salary in order to pay the alimony and child support; or
  - one-third of the total wage or salary in order to pay for other debts;
- tools necessary for the debtor to practice their profession; and
- in relation to the debtor's personal items, the judge will decide which items would be considered adequate for the debtor.

Costs

There are no charges for filing or appealing a claim in any Saudi court at the date of writing this report. Generally, each party bears its own lawyers' fees. However, it is possible to claim reimbursement of a party's legal fees, and it is under the judge's discretion to award the amount they see fit or to reject the claim.

Class actions

Generally speaking, class actions in Saudi Arabia are only permitted in respect of securities litigation pursued before a quasi-judicial authority that determines securities disputes, the Committee for Resolution of Securities Disputes (the "Committee"). For an applicant to submit a request for a class action, they must meet two requirements:

- the request shall demonstrate that the suit is identical to other potential or existing disputes "*in terms of legal bases, merits and the subject matter of the claim*"; and
- the request shall demonstrate that the decision of the Committee on the subject matter of the claim may have an effect on other potential or existing disputes.

Any interested party can submit a request for a class action to the Committee which shall make a decision as to whether to accept the filing of a class action within 30 days of its submission.

Once a class action application is approved and announced, the class action record will be made available to the public. The Committee certifies the class action once a minimum of 10 requests is reached within a period of 90 days from the announcement of the first request.

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Singapore

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Overview of court system

Singapore's legal system is based on the English common law legal system. The four main sources of law are the Singapore Constitution, written laws made by Parliament (Acts of Parliament and subsidiary legislation) and judge-made law. The Constitution is the supreme law of the land, which takes precedence over both written laws by Parliament and judge-made law. Written laws by Parliament likewise take precedence over judge-made law.

The court system comprises the Supreme Court, the State Courts and the Family Justice Courts:

- The State Courts consist of the District Court, the Magistrate's Court, the Coroners Court and the Small Claims Tribunal. The State Courts are subordinate to the Supreme Court.
  - The Magistrate's Court hear civil claims of up to SGD60,000, while the District Court hear civil claims of up to SGD250,000;
  - The Small Claims Tribunal hears civil claims of up to SGD10,000, which may be raised to SGD20,000 with the written consent of all parties; and
  - The Coroner's Court investigates cases where a person has died in a sudden or unnatural manner, by violence, when the cause of death is unknown and in situations where the law requires an inquiry.
- The Supreme Court consist of the Court of Appeal, High Court (General Division and Appellant Division) and Singapore International Commercial Court (SICC).
  - The General Division of the High Court hears civil cases in the first instance where the claim sum exceeds SGD250,000 and cases on appeal from the State Courts;
  - The Appellate Division of the High Court hears civil appeals apart from those prescribed under the Sixth Schedule of the Supreme Court of Judicature Act 1969 (SCJA);
  - The Court of Appeal is the final court of appeal and hears civil appeals from the High Court. Court of Appeal hearings are usually presided by three Judges; and
  - The SICC deals with transnational commercial disputes, which are heard by specialist local and international Judges.
- The Family Justice Courts consist of the Family Division of the High Court, the Family Courts and the Youth Courts.

A number of specialised tribunals and courts operate in Singapore, including the Syariah Court, Employment Claims Tribunal, the Industrial Arbitration Court, Protection from Harassment Court, and the Intellectual Property Office of Singapore.

Singapore's main sources of law include the Constitution, Acts of Parliament, subsidiary legislation and case law. Lower courts are bound by the decisions of higher courts: the Court of Appeal is not bound by its own decisions; the High Court is bound by the decisions of the Court of Appeal but not its own prior decisions; the State Courts are bound by the decisions of the Court of Appeal and the High Court. English and other Commonwealth decisions are persuasive, but not binding on the Singapore courts.

All court proceedings in Singapore are conducted in English, although the courts provide in-house interpretation services for parties who do not speak or are not comfortable communicating in the English language.

Limitation

The Limitation Act 1959 (Limitation Act) provides that claims based on torts (i.e. civil wrongs) or breach of contract must be issued within six years of the cause of action accruing. However, the limitation period may be extended in cases involving fraud or mistake. In such cases the limitation period generally starts to run from the time the fraud or mistake is actually discovered or could have been discovered with reasonable diligence.

Different limitation period may apply in other claims, for example, a 12-year limitation period applies for action on judgment or action to recover land.

Procedural steps and timing

The procedural rules for Singapore civil proceedings are contained in the Rules of Court 2021 (ROC 2021) and the relevant court's Practice Directions.

A party must make an offer of amicable dispute resolution before the commencement of and during the course of any action or appeal, unless there are reasonable grounds not to do so. Likewise, the other party must not reject any such offer unless there are reasonable grounds to do so. The court has the power to order the parties to attend alternative dispute resolution at any time it deems appropriate. A party's failure to offer or participate in amicable resolution is a relevant consideration when the court deals with the issue of division of costs between the parties.

Proceedings are initiated by filing an Originating Claim (where there is a substantial dispute of fact) or an Originating Application (when it is unlikely to be a substantial dispute of fact, or the disputed issue is a question of law) at the relevant court. The Originating Claim is accompanied or followed by a Statement of Claim, while the Originating Application is accompanied or followed by a supporting affidavit (which contains the claimant's evidence). The Originating Claim or Originating Application must be served within the validity period of no later than three months from the date the document is issued, although the court may extend the period of validity twice for not more than three months at a time.

The claimant must take reasonable steps to serve the originating process to the defendant as soon as possible, and in any event within 14 days after the date of issuance if the defendant is located in Singapore. The originating process must be served personally to be effective. If it is impractical to serve the Originating Claim or Originating Application on the defendant personally, the claimant may apply for an order for substituted service, which must be effected within 14 days after the court's order permitting substituted service. If the defendant is outside of Singapore, reasonable steps to serve the originating process must be taken within 28 days after the date of issue (with the court's approval).

Personal service may be effected by a process server of the Court, a solicitor, a solicitor's employee, a litigant who is not legally represented or such a person's employee, or any other person that the court may allow.

Where the defendant is served with an Originating Claim and wishes to contest the claim, the defendant must:

- File and serve a Notice of Intention to Contest or Not Contest within 14 days after the Statement of Claim is served on the defendant in Singapore, and within 21 days where the defendant is served out of Singapore; and, if the claim is contested
- File and serve a Defense to the Originating Claim within 21 days after the Statement of Claim is served on the defendant in Singapore, and within five weeks if the defendant is served outside of Singapore. If the defendant also intends to counterclaim against the claimant, the defendant must file and serve the Counterclaim together with the Defense. If the defendant serves a Counterclaim, the claimant must file and serve a Defense to the Counterclaim within 14 days after the Defense and Counterclaim is served on the claimant.

The claimant is not required to file a Reply to the Defense if the claimant merely wishes to deny assertions without adding anything material. If the claimant wishes to file a reply, the claimant must seek the court's approval.

Where the defendant is served with an Originating Application and wishes to introduce evidence in response to the claimant's supporting affidavit, the defendant must file and serve the defendant's affidavit on the claimant within 21 days after the Originating Application and supporting affidavit are served on the defendant in Singapore, and within five weeks if the defendant is served out of Singapore.

Throughout the case, the court will usually direct the parties to attend regular case conferences, during which the court will provide case management directions to facilitate the progress of proceedings. Such case management directions include the timelines for disclosure

by parties, list of witnesses, filing and exchange of Affidavit of Evidence-in-Chief and objections, and fixing trial dates.

Legal proceedings generally take 12 to 18 months at the State Courts, and 12 to 24 months or more at the High Court. However, the actual duration for each stage of proceedings varies between cases, depending on the complexity and the case management of each case. During this process, the courts may render both interim and final judgments.

There is no mandatory requirement for parties to be legally represented, and they may represent themselves as litigants-in-person. Litigants-in-person are held to the same standard and lawyers and are required to comply with the procedural rules and standards.

Disclosure and discovery

The court will usually give directions at the case conference for the parties to exchange a list of and copies of the following documents in their possession or control within 14 days from the date of the case conference, except for privileged documents and documents where publication would not be in the public interest:

- All documents that the party will be relying on; and
- All known adverse documents, which include documents which a party ought reasonably to know are adverse to its case. In other words, the obligation to produce documents is not limited to the production of adverse documents of which a party is actually aware. It also includes the production of adverse documents that the party could have knowledge about through reasonable checks and searches.

As the disclosure obligation is a continuing one, if a party comes into possession or control of a new relevant document after general discovery directions have been complied with, that party is under an obligation to produce the new relevant document within 14 days of coming into possession or control of it.

A party may apply for the production of specific documents or categories of documents in a party's possession or control. The court will order production of the requested documents only if the requesting party properly identifies the requested documents and the proves that the requested documents are material to the issues in the case. However, the court will not order production of:

- documents that merely lead to other relevant documents (i.e. documents, which are not relevant in themselves, would reveal relevant documents), except in a special case;
- a party's private or internal or internal correspondence, unless such correspondence is known to be adverse to that party, or in a special case; and
- subject to any written law, documents subject to any privilege or where production would be contrary to the public interest.

Parties may agree between themselves to produce and exchange documents falling within a broader scope. Likewise, the court may allow a broader scope of production of documents where it determines that it is in the interests of justice to do so.

A party may also apply to court to obtain discovery before the commencement of proceedings or against a third-party to identify possible other adverse parties to the proceedings, to enable a party to trace the party's property or for any other lawful purpose, in the interests of justice. A third-party will be entitled to all reasonable costs arising out of such an application.

Default judgment

A default judgment is a judgment made against a party due to non-compliance with a procedural rule, without reference to the actual merits of the case.

In an action commenced by an Originating Claim, the claimant is entitled to apply for a default judgment where the defendant:

- fails to file and serve a Notice of Intention to Contest or Not Contest;
- states in the Notice of Intention to Contest or Not Contest that the defendant does not intend to contest the claim; or
- fails to file and serve a Defense to within the prescribed time.

Where the defendant files and serves a Counterclaim, the defendant is entitled to apply for a default judgment in respect of the Counterclaim where the claimant fails to file and serve a Defense to the Counterclaim within the prescribed term.

No equivalent default judgment procedure applies for actions commenced by an Originating Application. If the defendant fails to file its affidavit within the prescribed time, the court will proceed on the assumption that the defendant does not wish to introduce evidence and will hear the Originating Application based on the claimant's supporting affidavit and the parties' submissions.

The defaulting party may apply to set aside or vary a default judgment if it was entered irregularly (i.e. where there are procedural defects), or where the judgment was obtained regularly, the defaulting party is able to establish a prima facie defense by showing that there are triable or arguable issues. While there is no formal time limit for an application to set aside a default judgment, it should be made as promptly as possible.

Appeals

Appeals from the State Courts are heard by the General Division of the High Court. Subject to the issue of whether the court's permission is required, the Notice of Appeal must be filed within 14 days after the date of the lower court's decision. Appeals from the General Division of the High Court are heard by the Appellate Division of the High Court or the Court of Appeal. Subject to the issue of whether the court's permission is required, the Notice of Appeal must be filed within 28 days after the Judge's decision.

Civil appeals generally take six to 12 months, depending on the complexity of the case and whether interlocutory applications are filed. An appeal does not suspend the effect of the appealed judgment unless the court directs otherwise.

The Appellate Court usually rehears the case on documents and is free to depart from the lower court on points of law. It will be slow to overturn the lower court's findings of facts and will only do so if the lower court's assessment is plainly wrong or against the weight of the evidence. That said, the Appellate Court may depart from the inferences drawn by the lower court if they are not supported by the facts, as well as the lower court's finding on a witnesses' credibility if it has access to the same material as the lower court.

Following the appeal hearing, the Appellate Court may give any judgment or make any order which ought to have been given or made, and make such further orders as the case may require. This may include ordering a new trial if substantial injustice will be caused otherwise.

The Court of Appeal hears appeals from the Appellate Division of the High Court only if they raise a point of law or public importance, or appeals from the General Division of the High Court arising from certain cases, including those (but not limited to) relating to:

- constitutional or administrative law;
- contempt of court;
- the law of arbitration;
- the insolvency, restructuring or dissolution of a corporation, limited liability partnership or sub-fund of a variable capital company;
- the law of patents;
- admiralty or shipping law;
- a decision of the SICC;
- appeals under certain written laws; and
- a decision or order of the General Division of the High Court under the Mediation Act 2017 (Mediation Act) or the Singapore Convention on Mediation Act 2020 (Singapore Convention on Mediation Act).

Interim relief proceedings

The Singapore courts have wide powers and discretion to grant a variety of interim remedies, including injunctions, search orders and interim payments.

The Single Application Pending Trial (SAPT) mechanism was introduced by the ROC 2021 with a view of streamlining interlocutory applications. To the extent possible, the court must order a SAPT to be made by each party, which includes:

- addition or removal of parties;
- consolidation of actions;

- division of issues at trial to be heard separately;
- security for costs;
- further and better particulars of pleadings;
- amendment of pleadings;
- filing of further pleadings;
- striking out of part of an action or of the defense;
- judgment on admission of facts;
- determination of questions of law or construction of documents;
- production of documents;
- interim relief;
- expert evidence and assessors;
- independent witnesses and interest non-parties; and
- independent counsel.

The court will usually give directions for the filing of the SAPT at a case conference. Under the ROC 2021, the court must order the applying party to file and serve its application and supporting affidavit within 21 days from the date of the case conference and the other party to file and serve an affidavit in reply within 21 days thereafter. The matters in an SAPT can be dealt with over several hearings.

No application may be taken out by any party at any time other than as directed at the case conference or with the court's approval, save for the following:

- an injunction or search order;
- substituted service;
- service out of Singapore;
- setting aside service of an originating process;
- judgment in default of a notice of intention to contest or not contest;
- judgment in default of defense;
- summary judgment;
- striking out of the whole of an action or defense;
- stay of the whole action;
- stay of enforcement of a judgment or order;
- an enforcement order;
- permission to appeal;
- transfer of proceedings under the State Courts Act;
- setting aside third-party proceedings;
- permission to apply for a committal order; or
- the subject of the confidentiality order is an offshore case.

In addition, no application may be taken out during the period of 14 days before the commencement of the trial and ending when the court has determined the merits of the action, except in a special case and with the trial Judge's approval.

The requirements for obtaining interim relief depend on the type of relief sought. For instance, the court will only grant an interim injunction before trial where:

- there is a serious question to be tried; and
- the balance of convenience lies in favour granting or refusing the interlocutory relief that is sought.

The overarching guiding principle is that the court should take the course which appears to lower the risk of injustice if it should turn out to be wrong at trial. The applicant will usually be required to give an undertaking to abide by a subsequent order to as to damages for any loss that the respondent may suffer as a result of the interim injunction.

While interlocutory applications are generally heard *inter partes* (with one or more parties being served with the application), they can be heard *ex parte* (with no other parties being served with the application) in appropriate circumstances and even before the issue of proceedings, such as where the case is one of urgency. Such circumstances include the risk of dissipation of assets and destruction of evidence, and there must be some genuine factual basis for this belief. Where applications are made *ex parte*, the applicant is subject to a duty of full and frank disclosure of all material facts.

Subject to the issues of whether the court's permission is required and whether the decision is appealable, a dissatisfied party may file a Notice of Appeal in respect of the court's decision in an application, including decisions made in respect of a SAPT. The Notice of Appeal must be filed within 14 days after the date of the decision, although the time for the filing of an appeal arising from a SAPT does not start to run until all matters including costs have been heard and determined by the court. An appeal does not suspend the effect of the appealed decision unless the court directs otherwise.

Again, there is no mandatory requirement for parties to be legally represented, and they may represent themselves as litigants-in-person.

Prejudgment attachments and freezing orders

The Singapore courts have the power to grant a *Mareva injunction* to restrain the respondent from dealing with his assets. A *Mareva injunction* can be either worldwide or domestic in scope and extends to all assets legally or beneficially owned by the respondent. This includes tangible assets, choses in action and assets acquired after the date of the injunction is granted. Examples include real property, bank accounts, shares, bonds, stocks, machinery and equipment, salary (such as fees and commission) and cryptocurrency assets.

An application for a *Mareva injunction* can be made before or after the initiation of proceedings and while it is typically made against the defendant in the action, it may be made against a third party if it can be shown that the third party is holding assets of which the defendant is the beneficial owner. Where the *Mareva injunction* is made after the initiation of proceedings, the applicant must undertake to commence proceedings against the defendant as soon as practicable. The applicant will also usually be required to give an undertaking to abide by a subsequent order to as to damages for any loss that the respondent may suffer as a result of the *Mareva injunction.*

Given the urgent nature of *Mareva injunctions*, they are usually heard *ex parte*.

The court will only grant a *Mareva injunction* if it is just and convenient to do so. To this end, the applicant must show the following:

- the applicant has a valid cause of action over which the court has jurisdiction;
- there is a good arguable case on the merits of the claim (i.e., a more than barely capable of serious argument);
- the respondent has assets within the jurisdiction for a domestic *Mareva injunction*, or that the respondent has insufficient assets within jurisdiction to satisfy the claim and there are assets outside the jurisdiction for a worldwide *Mareva injunction*. Insofar as possible, the applicant must identify the assets which are to be subject to the order; and
- there is a real risk that the respondent will dissipate the assets to frustrate the enforcement of an anticipated judgment against the respondent.

Freezing orders are enforced by serving the order on the relevant respondent and third parties (if any). A failure to comply with the freezing order will be considered as contempt of court, which is punishable by fine and/or imprisonment.

Costs

While costs are at the court's discretion and subject to the reasonableness requirement, a successful party will generally be allowed to recover its costs (legal fees and disbursements) from the unsuccessful party, unless there are special reasons to depart from this starting

position (e.g. costs were incurred due to unnecessary claims or issues, or due to misconduct or neglect).

When awarding costs, the courts will have regard to any pre-trial offers or amicable resolutions (or failure to engage in such efforts), the scales of costs in the Rules of Court and the judge-issued cost guidelines in the Practice Directions.

The court fee payable for commencing an action depends on where the case is commenced and the claim sum. Where the claim is commenced in the High Court, the court fee is SGD500 for a claim of up to SGD1 million or SGD1,000 for a claim of more than SGD1 million. The court fee is SGD150 for a claim in the District Court and SGD100 for a claim in the Magistrate's Court.

Class actions

In Singapore, the main mechanism for group litigation is representative proceedings, where one or more people represent a larger group of people. However, representative proceedings are not common in Singapore.

Representative proceedings can be commenced without the approval of the court and there are no restrictions as to the type of claim or area of law. What is essential is that numerous persons must have a common interest in any proceedings before they can sue or be sued as a group with one or more of them representing the group. The ROC 2021 does not specify a minimum number of persons required, which appears to be subject to the court's discretion.

The representative must obtain the written consent of all the members in the group to represent them in the action, and all of them must be included in the list of claimants or defendants (where applicable). Where there is a class of persons and all or any members of that class cannot be ascertained, the court may appoint one or more persons to represent the entire or part of the class, and all the known members and the class must be included in a list attached to the order of court. The court has the power to add or substitute parties in a representative action.

A judgment or order given in a representative action is binding on all the persons and class named in the list of claimants or defendants.

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Slovakia

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Overview of court system

Slovakia is a civil law jurisdiction, with its courts operating under codified statutes (for example, the Civil Procedure Code). Accordingly, Slovak courts primarily determine cases by considering the principles and rules codified in the Civil Procedure Code and other codified laws, although precedents are often used by parties to strengthen their case. Whilst litigants have the right to address the court in their native language, litigation is only conducted in the Slovak language. Where appropriate, courts will appoint an interpreter to ensure that litigants have an equal opportunity to exercise their rights.

Judicial power in the Slovak Republic is exercised by the general courts, administrative courts and the Constitutional Court of the Slovak Republic.

General courts have jurisdiction to preside over civil, commercial and criminal cases, as well as cases in which the Slovak Republic has binding jurisdiction under European Union law or international treaties. The system of general courts is made up of the following courts:

- Supreme Court of the Slovak Republic;
- Regional Courts (8);
- District Courts (31);
- City Courts (5); and
- specialized Criminal Court.

Most cases heard by the general courts are decided by a single judge in a District Court or City Court. However, as described more fully below, if a party disagrees with a first-instance decision, the case may be appealed to an appellate court (Regional Court). If a further appeal is deemed necessary, then, assuming the relevant legal thresholds have been met, an extraordinary remedy may be filed to the Supreme Court of the Slovak Republic. Decisions before the Regional Court or Supreme Court are heard before a panel or (in the case of the Supreme Court) a grand chamber. A panel consists of the president and two judges. A grand chamber consists of the president of the grand chamber and six judges.

By contrast, the administrative courts determine actions or appeals against decisions, interventions, other measures or inaction by administrative and judicial authorities. In respect of public administration, this includes ruling on referendum matters and issues concerning political parties and movements. The administrative courts are comprised of the following court:

- Supreme Court of the Slovak Republic; and
- Administrative Courts (3).

Within the general and administrative court systems, the Supreme Court only deals with matters concerning due legal process. The Supreme Court will accept the lower court's factual findings, only investigating whether the law has been correctly applied to those facts. Furthermore, Supreme Court rulings serve as a guideline to the lower courts.

If all the above remedies have been exhausted, a constitutional complaint may be filed before the Constitutional Court of the Slovak

Republic challenging the alleged breach of the complainant's constitutional rights.

Limitation

The general limitation period is three years for civil claims and four years for commercial claims.

However, the following special limitation periods apply for several civil claims:

- Except where damages concern harm to a person's health, the right to sue for damages becomes statute-barred after two years from the day that the aggrieved party became aware of the damage and has ascertained the party responsible for such damage. There is a back-stop on damages claims of three years from the date of damage, unless the damage was caused intentionally - in which case limitation is extended to ten years. Furthermore, the right to sue for damages caused by bribery is statute-barred three years from the day that the court's judgment comes into effect and, at the latest, ten years from the day the criminal offence was committed.
- The right to demand the return of any benefit from unjust enrichment becomes statute-barred after two years from the day that the entitled person becomes aware of the unjust enrichment and has ascertained the enriched party. There is a back-stop on such claims of three years from the date of the enrichment, unless the enrichment was wilful – in which case limitation is extended to ten years. Relatedly, if the parties to an invalid or cancelled contract are obliged to return to each other all that they received under the contract, the court will take into account a claim of limitation only if the other party could also claim limitation.
- Rights connected to transport become statute-barred after one year, except for the right to damages connected with passenger transport.
- A right that is equivalent to an easement becomes statute-barred if not exercised for ten years.
- A right to a debt granted under the final decision of a court (or another authority) becomes statute-barred after ten years from the date on which the right was to be exercised under the decision. If the right is acknowledged by the debtor in writing (in respect of both the grounds and the amount), this is extended to ten years from the date of acknowledgment. If the acknowledgement states the time-period for performance, the period of limitation shall commence after the expiry of such period. If the court's decision (or the debtor's acknowledgment) divided repayment of the debt into separate instalments, the limitation period is ten years from the date on which each instalment becomes due. If, due to the failure to make some of the instalments, the entire debt becomes due, the ten-year period of limitation commences from the outstanding instalments become due.
- Interest and reoccurring performances become statute-barred after three years. Where rights that were finally and conclusively granted or acknowledged in writing are concerned, such a period of limitation shall apply only to the interest and reoccurring performances that became due after the decision entered into full force and effect or after the acknowledgement.

The limitation period generally commences on the date that the right could be exercised for the first time. The period of limitation concerning rights that must be first exercised by a natural person or legal entity commence on the date that the right is exercised in such manner. For a claim concerning the right of payment under insurance, the period of limitation commences one year from the insured event. Where the right of a beneficiary heir to obtain their inheritance is concerned, the period of limitation commences on the date that the decision concluding the inheritance proceedings comes into full force and effect.

Note that there are further provisions applicable for commercial claims.

Procedural steps and timing

Civil litigation proceedings commence upon delivery of the lawsuit or, in the case of an application for an interim measure or freezing order, upon delivery of the application. The court should deal with the proceedings in such a way that a decision can be reached quickly and economically.

The lawsuit is a formal Court submission and must contain the following:

- the Court to which the lawsuit is addressed;
- the party making the lawsuit;
- the matter to which the lawsuit relates;
- what the lawsuit seeks to achieve; and

- a signature.

Additionally, the lawsuit must also contain an identification of the parties, a true and complete description of the relevant facts, identification of the evidence needed to prove the relevant facts and the statement of claim.

After the lawsuit has been delivered to the court (and assuming the court has not dismissed the lawsuit or decided to discontinue the proceedings), the court will itself deliver the lawsuit and any annexes to the defendant. Together with delivery of the lawsuit, the court will invite the defendant to submit a statement of defence within the time limit set by the court. Assuming the defendant does not accept the claim in its entirety, the statement of defence must set out the essential facts of the defence, attach the documents relied upon and identify the evidence in support of the defendant's allegations. The court itself will then deliver the defendant's statement of defence to the plaintiff and provide a time limit by which the plaintiff may respond to the contents of the statement of defence. The plaintiff may state further facts and identify further evidence to prove their case, as may the defendant by way of rejoinder to the plaintiff's response.

Up to this stage, the proceedings will have been conducted in writing only. Once the reply and rejoinder procedure has been exhausted, a party should not, in principle, be able to adduce new facts and evidence. The court may order a preliminary hearing prior to the first hearing. If possible and expedient, the court will attempt to resolve the dispute amicably or recommend that the parties attempt mediation. The purpose of the preliminary hearing is to ensure the procedural economy of the litigation, ensuring the proceedings advance speedily and more efficiently. If it has not been possible to conclude the proceedings at this preliminary stage, the court must prepare for the subsequent hearing by imposing procedural directions on the parties, as well as indicating its preliminary legal assessment of the case. This ensures that the decision does not come as a surprise for the parties and that they have the opportunity to respond both to the court's assessment of the dispute and the opposing party's legal arguments and evidentiary submissions. The court shall also indicate the expected date of the hearing.

The time taken to dispose of proceedings heavily depends on the court's workload and the complexity of the case. In Slovakia, there is no statutory limit in respect of a maximum time-period for proceedings. It is common practice for court proceedings to take several years.

Disclosure and discovery

Parties to the dispute must adduce evidence in support of their claims, but each party is (subject to the below) responsible for the evidence provided to the court. Furthermore, the court decides which of the proposed evidence it will consider. In the Slovak Republic, any material that can contribute to the proper clarification of the case and that has been obtained in a lawful manner may be adduced as evidence. The most common means of adducing evidence are: examining a party, examining a witness, adducing a document, adducing an expert statement and adducing expert evidence. It should be added, however, that no evidence has prescribed legal force. The court evaluates the evidence in a discretionary manner, considering each piece of evidence separately and in relation to each other.

The court has two powers in relation to evidence. The first is the duty of redaction: any person that has material necessary to establish a fact (such as a matter relevant to the proceedings) must submit it to the court. The second is the duty of information: parties must notify the court in writing of facts relevant to the proceedings and the court's decision. However, persons bound by the obligation of confidentiality are exempt from that obligation.

Slovak law does not govern the procedure of discovery, meaning that the filing of a discovery claim may not be executed in the Slovak jurisdiction.

Evidence may be obtained by the court itself. The court may, even without request, take evidence derived from public registers and lists if these contradict a party's factual allegations; however, the court must not obtain other evidence without the request of parties. The court may, even without such request, obtain evidence to determine whether its procedural directions have been complied with, whether the proposed decision will be enforceable, and to determine issues of foreign law. In a consumer, anti-discrimination or individual labour dispute, the court may also obtain evidence that the plaintiff has not proposed to adduce if deemed necessary to decide the case.

The court may order anyone to provide evidence that is necessary to establish the facts of the case. In certain cases, a party is not obligated or is prohibited to present evidence. For example, a witness may refuse to testify if, by testifying, he would create a danger of instigating criminal prosecution against himself (or against persons close to him) or if, by testifying, he would violate the confidentiality of a confession or information entrusted to him in a pastoral capacity. Relatedly, a witness must maintain the confidentiality of information protected under a special regulation and any other duty of confidentiality established by law or recognized by the state. Where a witness believes themselves to be prohibited from testifying, they must give notice as soon as they become aware of such prohibition. However, the existence of the prohibition must be proved and the court will ultimately decide whether such a prohibition applies. The above also applies *mutatis mutandis* where evidence is given otherwise than by questioning and in cases of inspection as well.

Default judgment

Default judgment is a special type of judicial decision that results from the passivity of the parties in the litigation. Passivity is to be understood as the failure to fulfil the basic procedural obligations of a party, which in the case of the defendant means the failure to submit a statement of defence or, in the case of both the plaintiff and the defendant, the failure to appear at the hearing without timely justification for such absence.

Default judgment may be specifically requested by a party or ordered on the court's own initiative. In rendering a default judgment, the court will examine the merits of the claim.

Default judgment is only applicable to lawsuits in which the plaintiff seeks a remedy requiring the defendant to perform an obligation (for instance *dare, facere, omittere, pati*) or to pay a sum of money. Moreover, the default judgment procedure is not available for certain specific claims – for example, claims against a consumer in a consumer rights dispute.

A defendant may challenge a default judgment within 15 days of becoming aware of the default judgment.

Appeals

As explained above, most civil cases begin in the District Courts and City Courts. The domicile of the defendant usually determines the court that will hear the claim. In general terms, appeals against judgments of the District Courts and City Courts can be heard at one of the eight Regional Courts of appeal. The relevant appellate court will re-examine the facts of the case and may reach its own factual and/or legal conclusions on the case.

In addition to the general requirements, the appeal submission must state the decision against which it is directed, the extent to which it is contested, the grounds on which the decision is held to be wrong (grounds of appeal) and what the appellant seeks to obtain (application for leave to appeal). The appeal must be submitted, within 15 days of the delivery of the decision, to the court whose decision is being appealed. So long as the appeal submission was correctly filed (see below), the lower court's decision will not become effective until the appeal has been determined by the appellate court.

Grounds for appealing a lower court's decision include:

- a party´s right to a fair trial has been infringed;
- an excluded judge or an improperly constituted court decided the case;
- some other error to the proceedings that could have resulted in an incorrect decision;
- based on the adduced evidence, the court made incorrect factual findings; or
- the court's decision is based on an incorrect legal opinion.

The appellate court will refuse the appeal if the submission was delayed or filed by an unauthorized person, filed against a decision for which no appeal is admissible or does not comply with the statutory requirements and the appeal proceedings cannot be continued because of such defect.

In certain cases, it is possible to appeal the appellate court's decision, by extraordinary remedy to the Supreme Court of the Slovak Republic.

Interim relief proceedings

An application for an interim measure (such as a preliminary injunction) may be made before, during or after the proceedings. The purpose of an interim measure is the urgent protection of the rights of a party that have been threatened or violated. An interim measure is granted on the basis of a simplified and urgent court procedure. For example, the court may decide on an interim measure within a shortened time frame (30 days from the receipt of the application for an interim measure) and without having to take full evidence (for example, the court will generally rely only on the allegations and evidence of the party seeking the interim measure).

By an interim measure, the court may impose a wide range of obligations or restrictions on a party to the dispute. The Civil Procedure Code provides a list of what interim measures may be impose on a party, but in practice the measures primarily imposed are:

- ordering the deposit of a sum of money or asset into the court's custody;
- prohibiting the disposal of certain assets or rights; and
- mandating or prohibiting the performance of, or requiring the endurance of, some act.

Depending on the type of interim measure, the duration of relief will differ. A temporary interim measure will only provide the applicant with the relevant protection up to a certain point in time (usually until the final decision of the main proceedings).

A party may appeal an order of the court granting or revoking an interim measure or freezing order. The applicant must file its appeal within 15 days of the delivery of the decision granting the interim measure. As an interim measure is enforceable by delivery, an appeal will not suspend the effect of an interim relief measure.

Prejudgment attachments and freezing orders

Slovakia's civil jurisdiction recognizes two legal remedies that could fall within the scope of prejudgment attachments, namely security measures and interim measures. The court may, by way of a security measure, create a lien on the property, rights or other assets of the debtor to secure a pecuniary claim of the creditor. The lien is established by the issue of a resolution on the security measure and is created by entry in the relevant register. Enforcement of the lien may only take place after the claim has been validly recognized by a court decision.

The court may only proceed to examine whether an interim measure is justified if it concludes that a security measure is not preferable. A security measure may only be granted if the creditor has a pecuniary claim and there is a fear that future enforcement may be jeopardized. Interim measures, unlike a security measure, may also be granted where there is an immediate need to adjust the situation as between the parties to the dispute. Interim measures may also be granted during the main proceedings. Further discussion of interim measures can be found under the "**Interim relief proceedings**" heading above.

The substance of a freezing order is that the court may, at the creditor's request, create a lien on the debtor's property, rights or other assets to secure the creditor's pecuniary claim if it is feared that the execution will be jeopardized. The procedural provisions applicable to interim measures also apply to freezing orders.

The freezing order extends the possibilities for creditors to secure payment of their monetary claims and also strengthens the position of the creditor, as the creditor's position in the hierarchy of creditors changes to that of a lien creditor. However, the enforcement of the lien can only take place after the claim has been validly recognized by a court decision. It follows from the above that there is distinction between the securing of, and the enforcement of, a freezing order. On the one hand, it allows the freezing order to be imposed even without submitting an application on its merits; on the other hand, it makes the enforcement of the lien conditional on the existence of a claim granted by a court decision.

Costs

In civil proceedings, costs are expenses incurred in connection with the exercise or defence of a right. However, under Slovakia's laws, recoverable costs only include those costs which are proven, justified and reasonably incurred.

The court decides whether a party to the dispute is entitled to reimbursement for costs, even without an application, upon termination of the proceedings. The court determines the proportion of the costs by a percentage or fraction of the costs actually incurred by a party. In practice, the party against whom the judgment is given will usually be ordered to reimburse the opposite party's court fees.

One of the most common costs is the court fee. This is the fee that must be paid in order to initiate court proceedings. The amount of court fees is determined by the Court Fees Act. The rate of the fee is indicated either as a percentage of the fee base or as a fixed amount. The amount of the court fee is typically 6% of the value of the subject matter of the proceedings, with a minimum fee of EUR16.50 and a maximum fee of EUR16,596.50. In commercial cases, a maximum fee of EUR33,193.50 applies. If the subject matter of the proceedings cannot be valued in monetary terms (for example, the case concerns determination of ownership rights of property), a fixed fee of EUR99.50 applies.

A special category of costs are the attorney's legal fees and disbursements, the recoverability of which are determined in accordance with the provisions of the Decree on Lawyers' Fees and Disbursement for the Provision of Legal Services (irrespective of the fee agreed by attorney and client for the provision of legal services). Accordingly, costs recovered at the conclusion of proceedings may well not be equal to the actual cost of the attorney's fees.

Costs also include travel, subsistence, accommodation and evidence costs.

Class actions

At present, there is no direct equivalent in Slovakia of the type of class action seen in the US. However, there is currently proposed legislation (No. 261/2023 Coll) seeking to reform laws regulating bulk actions for the protection of the collective interests of consumers. A bulk submission consists of at least ten submissions delivered to the same court by the same entity on the same day.

Slovakia's current special regulation regarding bulk submissions requires the court to enter bulk submissions into the court registers at the same time, so as to preserve their continuity.

Slovakia also has a procedure whereby more than one entity (a "procedural community") can be on the plaintiff's or defendant's side. There are three types of procedural community:

- a separate community, where separate rights and obligations are at stake and each person acts for themselves. Here, the court decides each claim and obligation separately;
- an indissoluble community, where the rights or obligations of the parties are so common that the judgment must apply to everyone who acts as plaintiff or defendant. The procedural act of one member of the community will apply to the others; and
- a compulsory community, where a special rule requires the participation of all the parties to a legal relationship in order for the litigation to proceed.

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South Africa

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Overview of court system

South Africa has a mixed common law system and is influenced by other legal systems such as Roman-Dutch civil law and English common law. Legislation and customary laws (including indigenous law) are also applied. Since South Africa adheres to constitutional supremacy, all law, regardless of origin, is subject to the Constitution of the Republic of South Africa (Constitution).

There are multiple sources of South African law, including:

- the Constitution;
- legislation (statutes);
- precedent (court decisions);
- common law; and
- indigenous law.

The Constitution sets out the hierarchical structure of the South African court system as follows:

- The Constitutional Court (the apex court);
- The Supreme Court of Appeal;
- The High Courts;
- The Magistrates' Courts consisting of the Regional and District Courts; and
- Any other court established or recognised in an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.

The principle of *stare decisis* is a juridical command to the courts to respect previous decisions with similar facts and legal issues. The practical application of the principle of *stare decisis* is that each court is bound by its previous judicial decisions, as well as decisions of the courts superior to them. Courts are enjoined to promote the Bill of Rights in the Constitution when interpreting legislation or developing the common law.

South Africa has various specialised courts, which include, *inter alia*, the:

- Special Income Tax Court;
- Competition Appeal Court;
- Commercial Court;
- Labour Courts and Labour Appeal Courts; and
- Equality Courts.

South Africa has 12 official languages. Notwithstanding this, English has been decreed to be the language of record in the South African courts. Witnesses in court proceedings are permitted to testify in their preferred language and the Uniform Rules of Court make provision for translators. Documents in a language other than English may be used in civil proceedings, provided that the document is accompanied by a sworn translation in accordance with the terms of the Uniform Rules of Court.

South Africa's trial system and procedures are typically adversarial. Cases will be heard by judges, who are either previous attorneys or advocates. It is not compulsory to have legal representation and parties may conduct their own cases in court.

The Constitutional Court

The Constitutional Court is South Africa's highest court - its decisions cannot be varied by any other court. It decides constitutional matters and issues connected to decisions on constitutional matters (such as an appeal granted by the Constitutional Court which involves an arguable point of law of general or public importance). A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

A matter may be brought directly to the Constitutional Court or appealed to the Constitutional Court from another court. To do this, leave to appeal must be granted by the Constitutional Court.

The Supreme Court of Appeal

The Supreme Court of Appeal decides appeals except in labour and competition matters (which are decided by specialised appeal courts). Appeals to the Supreme Court of Appeal emanate from the High Court of South Africa or a court of a similar status to the High Court.

The High Court

The High Court of South Africa consists of nine divisions. Each division has jurisdiction over a defined geographical area, containing any part of one or more of the provinces of South Africa. Each division also has a main seat and one or more local seats. A local seat has its exclusive area of jurisdiction, but the main seat has concurrent appeal jurisdiction over a local seat.

The High Court can hear any matter, including appeals or reviews from the Magistrates' Courts. A civil matter heard by a court of first instance (which includes the Magistrates' Court and the High Court) is usually presided over by a single judge or magistrate. Alternatively, the number of judges hearing a criminal case is determined by the specific law relating to criminal procedure. Any High Court matter may be heard by a court consisting of a full bench of not more than three judges.

The Magistrates Courts

Magistrates' Courts consist of District Courts and Regional Courts. The District Courts hear limited types of civil cases. For example, they cannot deal with certain matters such as matters relating to status, or matters where the monetary value exceeds ZAR200,000.00.

Regional Courts hear civil matters with a monetary value of over ZAR200,000.00, but up to and including ZAR400,000.00. The civil matters that the Magistrates' Courts hear include:

- delivery or transfer of any property, movable or immovable;
- ejectment against the occupier of any premises or land;
- matters arising from a mortgage bond;
- matters arising out of a credit agreement; and
- certain other matters not already set out above, such as claims for damages caused negligently to a vehicle or injuries to a person.

Limitation

Limitation / Prescription Periods

The principle of *extinctive prescription* means that certain types of debts or obligations may be extinguished or become unenforceable within a prescribed time. The Prescription Act 1969 (Prescription Act) regulates extinctive prescription, and its provisions apply as long as they do not conflict with other statutory provisions providing for their own specified periods. Failure to meet such time periods may

prevent an aggrieved person from instituting a claim.

The Prescription Act provides for different extinctive prescription periods, depending on the type of debt and debtor. These are:

- thirty years in respect of:
  - a debt secured by a mortgage bond;
  - a judgment debt;
  - any debt in respect of tax levied in terms of any statute; and
  - any debt owing to the state regarding the prospecting for and mining of minerals or other substances;
- fifteen years in respect of a debt owing to the state arising from a loan of money or the sale or lease of land, unless a longer period applies;
- six years in respect of a debt arising from:
  - a bill of exchange or any other negotiable instrument; or
  - a notarial contract unless a longer period applies;
- three years in respect of any other debt, unless specifically provided for by statute.

The prescription period starts to run as soon as a debt becomes due and may be interrupted in certain circumstances, such as an acknowledgement of the debt by the debtor (for example, paying part of the debt before prescription), or the serving of a summons by the creditor on the debtor to claim payment.

Procedural steps and timing

Typically, there are two types of proceedings provided for in the High Court, which are action proceedings and application proceedings. The nature of the matter and whether there is a dispute of fact will determine which is the appropriate process to use.

The typical steps and timelines in each type of proceeding are set out below (these procedures may be varied in the Commercial Court):

ACTION PROCEEDINGS

- Action proceedings are initiated by issuing, serving and filing a summons.
- Once the papers have been served, the defendant is afforded ten court days to serve and file a notice of intention to defend.
- The defendant is afforded 20 court days within which to prepare, serve and file its plea and / or counterclaim (or exception).
- After service of the defendant's plea, the claimant is permitted 15 court days to serve and file its replication (if any). The pleadings then close.
- Various pre-trial procedures then ensue, which may include, *inter alia*, the discovery of documents, requests for better discovery, requests for further particulars, inspections *in loco* (on-site inspections) and pre-trial conferences.
- Once the pre-trial procedures are complete, the parties can apply for a trial date.
- A trial is then held where oral, documentary and electronic evidence may be adduced. Witnesses are cross-examined.
- After the close of the hearing, oral arguments may be presented. Judgment is then handed down.
- Defended action proceedings take approximately 12 to 24 months from the date of service of the summons to the date of judgment (excluding appeals). Undefended action proceedings take approximately three to six months from the date of service of summons to the date of default judgment.

APPLICATION PROCEEDINGS

- Application proceedings are instituted by issuing, serving and filing a notice of motion and founding affidavit.

- The defendant is afforded ten court days to serve and file a notice of intention to oppose.
- The defendant is then afforded 15 court days to serve and file its answering affidavit.
- The claimant has ten court days to serve and file its replying affidavit.
- The evidentiary allegations and legal submissions are contained in the affidavits and no oral evidence is required.
- The written arguments are then exchanged and the matter is scheduled for hearing.
- Opposed application proceedings take approximately six to 18 months to be completed from the date of service of the notice of motion. Unopposed application proceedings take approximately three to six months from the date of service of notice of motion to the date of judgment.

Typically, decisions of Magistrates' Courts and the High Court can be appealed. A decision of the Magistrates' Court may be appealed to the High Court, and a decision of the High Court (as a court of first instance) may be appealed to either a full bench of the High Court or the Supreme Court of Appeal. An appeal may also be made to the Constitutional Court, either directly or indirectly, via the Supreme Court of Appeal.

Disclosure and discovery

A party is entitled to be informed of all the documentary evidence the opposing party intends to use at trial. Discovery of documentary evidence enables all parties to properly prepare for the trial. All documentation relevant to issues in dispute, whether in support or opposition of a party's case, must be disclosed in the discovery process, with the exception of without prejudice and legally privileged communications.

A court can compel a party to submit further or better discovery of documents on application by the opposing party. Parties must request documents with sufficient particularity; proverbial fishing expeditions are prohibited and considered an abuse of process.

There is no general entitlement to pre-action discovery. Discovery claims are filed after the commencement of proceedings. Even a request for information under the Promotion of Access to Information Act 2000 may be refused if it amounts to pre-action discovery.

Default judgment

A default judgment may be granted when:

- the defendant fails to give notice of an intention to defend;
- the defendant fails to deliver a plea within the prescribed time limits and after service of a notice of bar;
- the claimant does not deliver a declaration or is barred from doing so; or
- a defendant or claimant fails to appear at trial (after due notice).

Default judgment must be applied for, and a court is not entitled to give an order for default judgment *ex officio*.

An application for default judgment highlights the procedural non-compliance by the defaulting party and the merits of each party's case are usually not considered.

The party applying for default judgment must serve a copy of the application on the defaulting party. Once the default judgment is granted, the opposing party may, within 20 court days after acquiring knowledge of such judgment, apply to court upon notice to the plaintiff or applicant to set aside such judgment.

Appeals

Appeals in South Africa ordinarily take approximately six to 12 months to be finalized.

In the Magistrates' Court, an appellant must note the appeal within 20 court days of the date of the judgment appealed against. The appeal is noted by delivering the notice of appeal to the opponent and the Magistrates' Court.

In respect of appeals to the High Court, within 40 court days of noting the appeal, the appellant must, in writing and on notice to all other

parties, apply to the registrar of the High Court to schedule a hearing date for the appeal.

In the High Court, a party must apply for leave to appeal prior to commencing appeal proceedings. Application for leave to appeal may be made at the time the judgment or order is granted by stating the grounds of appeal. When leave to appeal is required and it has not been requested at the time of the judgment or order, the application for leave to appeal must be made within 15 court days of the date of the order appealed against. The application must set out the grounds of appeal. If the application is refused, the appellant is entitled to petition the Supreme Court of Appeal for leave to appeal.

An appeal usually suspends the effect and enforcement of the judgment and may be brought on a question of fact or law. On appeal, the case will be reconsidered on its merits. In order to appeal, the first-instance decision must be:

- final in effect and not susceptible to alteration by the court of the first instance;
- definitive of the rights of the parties. i.e. it must grant definitive and distinct relief; and
- of the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

This list is not exhaustive, and the interests of justice are of paramount importance when deciding whether a decision is appealable. An appeal can be refused if the grounds for appeal have not been properly substantiated.

Interim relief proceedings

South African law makes provision for interim interdicts to be sought as interim relief. A formal application can be launched for an interim interdict, which is a judicial process whereby a person is directed to perform or ordered to refrain from doing a particular act. This remedy is of an extraordinary nature and is only allowed where a person requires protection against an actual or threatened unlawful interference with his or her rights. An interdict can only be used as a remedy for ongoing or future infringements (i.e. no historic infringements).

An interim interdict can be brought on an *ex parte* basis.

An interim interdict is granted *pendente lite*, as a provisional order designed to protect the rights of the complainant pending an action or application to be brought to establish the respective rights of the parties. Its effect is to maintain the status quo pending the final determination of the court, at which point it ceases to operate. It is aimed at ensuring, as far as it is reasonably possible, that the party who is ultimately successful will receive adequate and effective relief.

The requirements for an interim interdict are as follows:

- the applicant must have a *prima facie* right that it seeks to protect;
- there must be a well-grounded apprehension of irreparable harm if the interim relief is not granted;
- the balance of convenience must favour the granting of an interim interdict; and
- no other satisfactory remedy must exist.

The court has discretion whether to grant an interim interdict, which must be exercised upon consideration of all the facts. Some factors which are taken into consideration are the applicant's prospects of success in the main action, the availability of an adequate ordinary remedy, the balance of convenience and the respective prejudice that would be suffered by each party as a result of the grant or refusal of an interlocutory interdict.

An interim interdict is usually applied for on an urgent basis, and an application may be refused if the applicant has delayed before applying. The timing of determining an interim interdict application depends on the facts but can range from a few hours to months.

A decision on an interim interdict usually cannot be appealed. However, in exceptional circumstances and, importantly, if the interests of justice permit it, a party may be granted leave to appeal.

Prejudgment attachments and freezing orders

South African law does not make provision for prejudgment attachments and freezing orders. However, a party can utilize the mechanism of an interim interdict to preserve a legal right pending the outcome of an action or application proceeding. For further information to that end, please see the section regarding interim relief proceedings.

Costs

A court has wide discretion with regard to costs. A successful party is ordinarily awarded a costs order against the unsuccessful party.

There are different types of costs:

- party-and-party costs: the standard costs order awarded is for the costs that are necessarily incurred for the purpose of litigation, to obtain justice, and protect the client's rights, which is charged according to a tariff set out in the rules of court;
- attorney-client costs: these costs orders entitle a party to recover more costs from the opposing party than he would have been able to recover on a part-and-party basis. These costs cover all costs that the attorney is entitled to recover from the client including costs, charges and expenses between attorney and client, according to a higher tariff. These costs orders are made because the losing party has agreed to pay such costs prior to litigation. A court may also make an attorney-client costs order to penalize a party that the court believes acted improperly; and
- costs *de bonis propriis:* this costs order directs a legal representative to pay the costs instead of their client. This order is made when the court believes that it was the legal representative's fault that certain legal costs were incurred. A court can also grant a *de bonis propriis* costs order against a person that acts in a representative capacity.

The parties to action and application proceedings do not pay any court fees in South Africa.

Class actions

In terms of section 38(c) of the Constitution, a class action or a representative action, allows a person or persons to institute action on behalf of and in the interest of a group or class of persons, having the same defined issues of fact and / or law in common.

There is no legislation or specific rules of court that regulate class actions in South Africa. The Superior Courts have therefore used their inherent power to develop the common law and developed a procedural and practical framework for the initiation of class actions by a litigant. South African courts have also relied on class action jurisprudence in foreign jurisdictions, such as the United States of America, United Kingdom and Australia.

There is a two-stage process to institute a class action. Firstly, a certification application is required. Once certified, the matter then proceeds by way of trial action.

The South African Law Reform Commission has listed the following questions that must be asked to certify a class action:

- is there an identifiable class?
- is there a cause of action known?
- is there a similarity between the legal and factual issues?
- is there a suitable representative?
- is it of legal importance to institute the action?
- is there a suitable method to institute the action?
- is it possible to plead *res judicata* at the conclusion of the matter?

Our courts have developed the following seven factors that a certification court must consider when deciding where or not to certify a class action:

- The class must be identified by using objective criteria. In other words, the applicant for certification must define the class with sufficient objective precision so that the class members can determine their membership in relation to the class;
- There must be a cause of action raising a triable issue, which must be set out in the draft particulars of claim accompanying the certification application along with the relief sought;
- The right to relief depends on the determination of issues of fact or law, or both, that are common to all members of the class. Internationally, commonality is considered to be the key ingredient for any class action;

- The relief sought and damages claimed must flow from the cause of action and are ascertainable and capable of determination;
- If the putative class action is a claim for damages, there must be an appropriate procedure for allocating the damages to the members of the class at the end of the trial;
- The proposed representative must be suitable to conduct the action and represent the class; and
- Given the composition of the class and nature of the proposed action, a class action must be the most appropriate means of determining the claims of class members.

However, the Constitutional Court has confirmed that the overriding principle of whether a court may certify that a class action may be instituted is whether it is in the interest of justice to do so.

There is no limitation on what types of claims can be brought by way of class action, and it is not limited to certain areas of law. Class actions can endure for a few years, given the two-stage process and the amount of resources and documentation usually involved. They are often settled during or after certification stage (if successful) and before the trial action commences.

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South Korea

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Overview of court system

South Korea has a civil law system with procedures similar to those in other civil law jurisdictions such as Germany, France and Japan. In South Korea, the Constitution is the highest source of law, and the Korean Civil Code takes precedence over case law.

Lower courts are not bound by the decisions of higher courts but lower courts will follow the decisions of higher courts as long as the facts and issues are similar.

The sources of law in South Korea include the following:

- The Constitution;
- Statutes passed by the National Assembly;
- Presidential decrees; and
- Ordinances issued by the head of each executive ministry.

South Korea has a single judicial system with three levels:

- Courts of First Instance
- Appellate Courts; and
- The Supreme Court.

South Korea has various specialized courts that serve either as Courts of First Instance or Appellate Courts.

The Courts of First Instance include, *inter alia*, the:

- Family Court;
- Administrative Court; and
- Constitutional Court.

There are no specialized commercial courts in Korea, as commercial cases are treated as ordinary civil cases. To improve the efficiency of court proceedings, some courts have assigned panels of judges to manage complex disputes related to international transactions, securities, construction, human resources and the environment.

The appellate courts include, *inter alia*, the:

- Patent Court, which reviews decisions made by the Intellectual Property Trial Board; and
- High Court, which reviews decisions made by the Korean Fair Trade Commission.

All of the proceedings before the aforementioned courts are conducted in the Korean language.

Limitation

Under the Korean Civil Code, the general statute of limitations for civil claims is ten years. However, the Korean Commercial Code provides a shorter statute of limitations for claims that arise from commercial transactions (*i.e.*, five years in principle). Further, certain types of claims are subject to special statute of limitations as provided under other governing statutes.

The statute of limitations generally begins to run when the cause of action arises (*e.g.*, breach of agreement). For tort claims, actions must be brought within

- ten years of the date when the tort was committed; or
- three years of the date when the claimant became aware of the damages and the identity of the tortfeasor, whichever is earlier.

All civil claims must be brought before the civil court that has jurisdiction, except for disputes that must be heard by the Patent Court, the Family Court or the Administrative Court mentioned above.

Even in cases where either party or both parties are not domiciled in Korea or the subject of the action is located outside Korea, a Korean court may exercise jurisdiction under the Private International Law Act over any dispute as long as it has substantial *nexus* with South Korea. A South Korean court would have jurisdiction if:

- either party is domiciled or has residence in South Korea;
- either party has a principal place of business or operations in South Korea or was established or incorporated under the South Korean laws;
- either party has a place of business in South Korea, and the dispute relates to such business;
- either party engages in continuous and organized business activities in South Korea, that target South Korea or are directed toward South Korea, and the dispute relates to such business activities; or
- the subject of dispute involves assets in South Korea, or the defendant's assets to which the plaintiff may seek an attachment are located in South Korea.

A person who seeks to file a lawsuit with a civil court in South Korea must pay a filing fee and service of process fees. The cost of the filing fee will be calculated according to a formula set in the Supreme Court rules.

Procedural steps and timing

A civil action is initiated with the filing of a complaint. The complaint must clearly state the names of the plaintiff and the defendant(s), the address of each party, the claim, and the cause of action. However, the complaint can be amended during the proceedings through a written submission, if:

- the underlying factual basis remains unchanged;
- the amendments do not cause a significant delay to the proceedings;
- the amended claims do not fall under the exclusive jurisdiction of another court; and
- the hearings are not closed.

In South Korea, service of process is conducted by the court. Service of process is deemed complete when a court officer or courier directly serves the documents on the defendant. However, under certain circumstances, service of process can be completed by simply depositing or posting documents to the address that the documents must be served to. In cases where the service address is unknown or no other method of service is possible, service of process may be done through a public notice.

If a party lives outside of South Korea, the method of service depends on whether the party resides in a Member State of the Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (the "Hague Service Convention"). If the party resides in a Member State, the process under the Hague Service Convention on Service would apply. If the party does not reside in a

Member State, the court may entrust the service documents to the Korean Ambassador, Minister, or Consul stationed in the foreign country or to the competent government authority in the foreign country pursuant to the International Judicial Cooperation for Civil Matters Act.

Upon service of the complaint, the defendant has 30 days from the date of service to submit an answer to the court, but this deadline may be extended. If the defendant fails to submit an answer within the deadline, the court may enter a default judgment without holding any hearing.

In South Korea, there is no substantive trial. Instead, the courts hold a series of separate hearings at regular intervals for case management, oral argument and witness examination. The number of hearings will depend *inter alia* on the complexity of the issues and the number of witnesses to be examined. The court will close the hearings for deliberation, after it has determined that the relevant issues have been fully addressed.

In contrast to jurisdictions such as the U.S., dispositive motions (e.g., motion for summary judgment), designed to dismiss some or all of the claims without further review by the court, are rarely filed or granted in South Korea. Instead, courts issue their judgment on all of the claims after completing the hearings process. While every case is different, first instance court proceedings generally take 12-18 months before the first instance court issues its judgment.

Disclosure and discovery

All forms of discovery are conducted by and are under the direct supervision of the court. In other words, a party cannot directly ask the other party to produce documents or witnesses. All requests for discovery must be made to the court and must be approved by the court. The scope of discovery in South Korea is limited compared to discovery in some common law jurisdictions.

When the counterparty possesses relevant documents, the requesting party may request the court to issue a document production order. The request to the court must clearly identify:

- the document requested;
- contents of the requested document;
- identity of the document holder;
- facts to be proved by the document; and
- the grounds for requesting a document production order.

If the court issues a document production order, the document holder must submit the requested document to the court absent of any justifiable reason such as a privilege. The court has discretion to review any document withheld from production in private and decide whether it should be produced. If the document holder fails to comply with the court's order without any justifiable reason, the court may accept the allegations of the other party as to the content of the document.

If a third party is in possession of relevant evidence, the court may issue a document production order against the third party. However, before determining whether to issue the order, the court must question the third party. For example, asking the third party to confirm whether it has possession of the requested documents and where they are stored. If the third party fails to comply with the court's document production order, the third party may be subject to an administrative fine.

In addition to document production orders, a party may request the court to issue a clarification order against the counterparty on factual or legal issues. The requested party is obliged to respond and submit supporting evidence, if any.

Default judgment

As noted in the section regarding Procedural steps and timing, if a defendant fails to submit an answer to the complaint within the deadline, the court may deem that the defendant has admitted the facts and claims alleged in the complaint and enter a default judgment against the defendant. However, if the defendant submits an answer before a default judgment is rendered, the court cannot issue a default judgment.

After a default judgment is issued, the defendant may challenge the default judgment in accordance with the general method of appeal. That is, the defendant must submit a written notice of appeal to the lower court within two weeks of being served with the default

judgment of the lower court.

Appeals

To appeal a decision of the Court of First Instance, the appellant must file a written notice of appeal to the lower court within two weeks of being served with the decision of the lower court. The grounds for appeal to the High Court may be on a legal or factual basis. High Court proceedings are similar to lower court proceedings in that the High Court holds a series of separate hearings at regular intervals to hear oral arguments and examine witnesses.

To appeal a High Court decision, the appellant must file a notice of appeal within two weeks of being served with the decision of the High Court. It generally takes less time to obtain a decision from the High Court than from the Courts of First Instance.

The High Court will review a decision of the first instance court *de novo,* regardless of which party appeals. A decision of the High Court may be appealed to the Supreme Court by either party, but appeals to the Supreme Court are limited to questions of law.

Supreme Court proceedings rarely involve hearings. The Supreme Court generally issues its decision after reviewing the parties' submissions and the court record. A decision from the Supreme Court can take anywhere from four months to several years after the date of the appeal. In fact, if the Supreme Court deems that the appeal is groundless, it will not review the appeal further and will dismiss it within four months of the date that it received the court record.

When the Court of First Instance or the High Court issues a judgment, it generally includes a provision that allows for provisional enforcement of the judgment. Thus, a party appealing that judgment or decision should file an application to stay the judgment while the appeal is pending.

Interim relief proceedings

In South Korea, interim relief may be sought by filing a petition for preliminary attachment or provisional injunction together with the main action. To obtain such relief, the applicant must demonstrate a *prima facie* case that it will be irreparably harmed if the requested relief is not granted.

A preliminary attachment preserves and freezes the property or assets of a debtor. The courts generally allow preliminary attachment if the requesting party can establish:

- the need to preserve assets;
- the claim has merit; and
- the assets are owned by the debtor.

The courts generally issue a preliminary attachment order on an *ex parte* basis, within two to three weeks from receiving the request.

There are two types of provisional injunction in South Korea:

- injunction to temporarily prohibit the debtor from disposing of the property that is the subject of the dispute.
- injunction to temporarily preserve the disputed rights.

The courts generally decide on a preliminary injunction application within one month of the date of filing, which may be prolonged if the courts hold a preliminary injunction hearing. The courts rule on provisional injunction requests after the respondent is afforded an opportunity to object.

The party seeking injunctive relief is responsible for any damages suffered by the respondent if the respondent prevails in the main action. Thus, the courts may order the party seeking injunctive relief to provide adequate security to cover such damages.

Prejudgment attachments and freezing orders

For information on prejudgment attachments and freezing orders reference is made to the section regarding interim relief proceedings.

Costs

In South Korea, the winning party is generally entitled to a recovery of costs. The costs mainly consist of stamp taxes (i.e., filing fees), service of process fees, out-of-pocket expenses, and a portion of attorneys' fees. Attorneys' fees are reimbursed only to the extent permitted by the Supreme Court rules. A full recovery of attorneys' fees is not possible. The final judgment of a court includes a decision on the allocation of costs of the proceedings.

Class actions

South Korea does not have a class action system, so each claimant seeking relief must file an individual action. The sole exception is the Securities-Related Class Action Act, which permits a class action to be filed by one or more class members after obtaining Permission for Class Action from the court.

The court will permit a class action if:

- the suit involves 50 or more class members;
- the total number of securities held by the class members is at least 1/10,000 of the total number of securities issued by the defendant company as of the time of the act that gave rise to the claim;
- the claims of the class members have common questions of law and/or fact; and
- the suit is an appropriate and effective means of realizing the rights of the class members or protecting their interests.

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Spain

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Overview of court system

Spain is a civil law jurisdiction with numerous courts. In broad terms, the civil court system is divided into the following:

- first instance courts, courts of peace and certain specialized courts (including commercial courts);
- provincial courts, which hear appeals filed against the judgments of the first instance and commercial courts; and
- either:
  - High Courts of Justice, which have jurisdiction over appeals filed against the judgments of Provincial Courts on applicable regional civil law (e.g., High Court of Justice of Catalonia hears appeals from the Provincial Courts in Catalonia on matters relating to Catalan civil law); or
  - the First Chamber of the Supreme Court, which hears appeals from the Provincial Courts in cases of national civil law.

As for case law, it does not take precedence over codified statutes, though the case law of the Supreme Court, also referred to as doctrine, binds all lower courts. Further, as a member of the EU, all Spanish courts are bound by the decisions of the Court of Justice of the European Union.

The sources of law in Spain are legislation, customary law (consuetudinary) and the general principles of law. Despite its importance, case law is not considered a source. Litigation only takes place in Spanish (or, less commonly, in other co-official languages such as Catalan, Valencian, Galician or Basque).

Limitation

According to the Civil Code of Spain, personal actions for which there is no specific statutory limitation will become time barred after five years from the date on which fulfilment of the obligation can be demanded. While a five year limitation period is the default position, the Civil Code also establishes other limitation periods (e.g., a one year limitation for civil tort liability; a 20 year limitation for foreclosure of a mortgage; and a four year limitation for an action for annulment).

Procedural steps and timing

In most legal proceedings in Spain, a party must be defended by a lawyer and represented by a legal court representative (*procurador de los tribunales*). The legal court representative serves as a liaison between the lawyer, the client, and the court. They file and manage court documents such as pleadings and orders, and generally check on the status of the proceedings.

Ordinary proceedings (*juicio ordinario*) are the most common civil proceedings in Spain as they are used for claims that exceed EUR6,000 and those where the economic interests cannot be calculated. Such proceedings are initiated by the claimant issuing a claim form (*demanda*) that states all the facts and allegations and provides all the documents (including expert reports) on which the claim is based.

The service of a claim form on the defendant is performed by the court but can also be carried out by the legal court representative, at the request of the claimant. The defendant has a period of 20 working days to file the defence or opposition, following which the court will call

the parties to a preliminary hearing (*audiencia previa*) to discuss certain procedural aspects (such as necessary joinders, etc.). The parties attend the preliminary hearing with their legal representative and lawyer.

At the preliminary hearing, the judge will ask the parties whether it is possible to settle the dispute. If it is not, the judge will:

- resolve any procedural issues raised by the parties;
- give the parties the opportunity to raise additional arguments that do not change the subject of the dispute or that clarify the pleading;
- hear the parties' challenges to the documentary evidence proposed by the opposing party;
- request that the parties establish the facts under dispute;
- decide on the admission of and any challenges to the evidence to be produced at the oral hearing; and
- set a date for the oral hearing.

The purpose of the oral hearing is to:

- enable the court to examine the evidence given by the parties, the witnesses, and the experts; and
- as appropriate, examine other types of evidence including documents, images and sounds.

Once the evidence has been given at the oral hearing, conclusions will be drawn from it by the lawyers and presented to the court in their closing arguments. The judgment (*Sentencia*) is given in writing by the judge. Other types of resolution rendered by the judge are the *Autos*, which are issued, for example, to admit or dismiss claims to be processed or to grant interim measures (*medidas cautelares*). Further, certain public servants of the judiciary other than judges (*Letrados de la Administración de Justicia*) also pass resolutions, such as *Decretos* or *Diligencias*.

Proceedings usually go by the following timeline:

- filing of the claim form;
- the relevant court will issue a notice accepting the claim within approximately one to three months;
- service of the claim form;
- 20 working days for the defendant to file a defence and any counterclaim;
- preliminary hearing within approximately three to nine months of the filing of the defence;
- oral hearing within approximately three to 12 months of the preliminary oral hearing; and
- judgment delivered within approximately one to three months of the oral hearing.

The timing of the entire proceedings is heavily influenced by the court's workload. However, the time from service of the claim form on the defendant to obtaining a judgment in an ordinary proceeding is 16 months, according to the 2022 official statistics.

Disclosure and discovery

In Spain, parties substantiate their claims with evidence of their choosing. Judges are likely to reject a party's request for general, non-specific discovery. However, a party may request the judge to order (or the court of its own volition may order) the opposing party to submit certain documents or produce evidence. The submission of documents can only be requested during the legal proceedings. The procedure, if ordered by the court, is expressly not intended to facilitate fishing expeditions. The party requesting disclosure should have a legitimate interest in such disclosure and the request should cover a narrowly defined scope of documents.

It is also possible for the court, at its own discretion, to give an interim judgment asking the party to submit certain additional evidence which the court considers essential for the case.

Default judgment

If the defendant fails to appear before the court, it will be declared to be in default (*rebeldía procesal*). However, the claimant cannot

automatically apply for a default judgment or a summary judgment. The proceedings will continue in the defendant's absence and, for the claimant to succeed, it will need to prove the basis for its claim.

The defendant in default may only appeal the judgment rendered in its absence when there has been a breach of procedure or, in proceedings before the Provincial Court, because:

- there has been an incorrect interpretation or application of the law, or
- judgment was obtained in a proceeding that did not comply with the required formalities.

The term to lodge such appeal is 20 working days:

- from the notification of the judgment to the defendant in default if it had been personally notified of the judgment; or
- from the day after the publication of the judgment in the official gazette if the defendant in default had not been personally notified of the judgment.

Appeals

The parties have the right to file an appeal against the judgments entered at first instance within 20 working days of the notification of such judgment. The competent court to hear the appeal is the corresponding Provincial Court (*Audiencia Provincial*). The court will be formed of a panel of three judges and will have the opportunity to review everything done in the lower court. The timeframe in which appeals are resolved by the Provincial Court varies, ranging from six to 18 months.

The judgment issued by the Provincial Court may also be subject to an extraordinary appeal. Appeals may be made for breaches of procedure or incorrect interpretation or application of the law or when a judgment has been obtained in a proceeding that has not complied with the required formalities (cassation appeal / *recurso de casación*). This extraordinary appeal must be filed before the Provincial Court which issued the relevant judgment within 20 working days of notification of the judgment to the relevant party. Such cassation appeal will be heard by the High Court of Justice of the relevant region, when the applicable law is the regional civil law, and the First Chamber of the Supreme Court (*Sala Primera del Tribunal Supremo*), when the applicable law is national civil law.

The cassation appeal before the Supreme Court is an extraordinary appeal and can be based either on the breach of substantive or procedural rules, but only if there is *cassational* interest (this is a legal interest beyond the specific case. e.g., a question not yet addressed by case law). There used to be a quantitative limit (EUR600,000) to access this type of appeal, however, this has been recently abolished. The cassational interest will exist in three cases:

- when the decision is contrary to the settled case law of the Supreme Court;
- when the contested decision rules on matters on which there is conflicting case law among the Provincial Courts; or
- where the contested decision applies rules on which there is no case law of the Supreme Court.

In addition, cassation appeal may, in any case, be filed against judgments of the Provincial Court in the context of civil judicial protection of fundamental rights (specifically, those that are subject to *amparo* proceedings) even if there is no *cassational interest*.

The decision on whether there is *cassational interest* (and thus if the appeal is admitted or not) is discretionary of the court (according to the abovementioned criteria). In case the cassation is unadmitted, this must be reasoned via decree (*Auto*). The court can also set the formal criteria (extension, format, etc.) to be followed when filing a cassation appeal.

The timeframe in which the Supreme Court resolves extraordinary appeals is estimated to be 27 months, according to the 2022 official statistics.

Regarding the effect that appeals have on the enforcement of judgments, it must be said that judgments are enforceable when these are final (cannot be appealed or have not been appealed). However, provisional enforcement can also be requested from the court of first instance.

Interim relief proceedings

In Spain, interim relief proceedings can be brought where such relief is necessary to ensure enforcement of a future judgment. The interim measures that can be granted primarily include:

- injunctions (i.e., an order requiring a party to do or not to do something);
- preventive freezing orders;
- interventions or court-ordered receiverships of productive assets;
- deposits of moveable assets;
- preparing inventories of assets in accordance with conditions to be specified by the court;
- precautionary registry entries of the claim in the Public Registry;
- court orders to provisionally cease an activity; or
- suspensions of contested corporate resolutions.

There is no informal way to obtain interim relief. An application must be filed in writing before the court with jurisdiction to deal with the main claim.

In order to be successful, an applicant seeking interim relief must satisfy each of the following requirements:

- provide the particulars, arguments and documentary evidence allowing the court to justify, without prejudging the merits of the case, a provisional and circumstantial judgment in favor of the claim (appearance of a good claim or *fumus boni iuris*);
- prove that, if the requested measures are not adopted before the judgment is issued, there is a real risk that any judgment in favor of the applicant would be defeated or prejudiced (risk in procedural delay or *periculum in mora*); and
- offer security to the court in order to compensate the respondent and related third parties (in a speedy and effective manner) for loss if it is found that the freezing order was wrongly granted (*caución*).

It is difficult to estimate the timeframe for interim relief proceedings. Non-urgent interim relief proceedings can range between one to six months, but in urgent *ex parte* proceedings, interim relief can be granted in a matter of days (depending on the court's workload).

Interim relief orders are usually granted by first instance courts. Appeals against such orders are resolved by Provincial Courts in a timeframe ranging between six and 18 months.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are types of interim relief. They can be applied for both before and during the proceedings. An application for a prejudgment attachment or freezing order should be made before the court that will be competent to hear the dispute once proceedings are commenced, or before the court hearing the dispute if the freezing order is sought during the proceedings.

These measures are initiated by the claimant (or future claimant) in the main proceedings. In principle, the court is required to hear both parties. However, if there is urgency and there is a risk that the property to which the attachment or freezing order relates may disappear before the court can hear the parties, the court will make its decision without hearing the defendant (in absentia or ex parte). It is mandatory for parties to be assisted in the hearing by a lawyer and legal representative (*procurador de los tribunales*).

In order to be successful, an applicant seeking a prejudgment attachment or freezing order will need to satisfy the criteria for granting interim measures referred to in interim relief proceedings, briefly:

- appearance of a good claim;
- risk of irreparable harm if the granting prejudgment of the attachment or freezing order is delayed; and
- offer of security to the court.

The assets that can be attached, by way of a prejudgment attachment or freezing order, are money or bank accounts of any kind; credits; securities or other financial instruments; immoveable assets or remuneration; and pensions and income from self-employed professional and commercial activities.

Where prejudgment attachments and freezing orders are requested before issuing the claim, the party requesting the relief must plead and prove urgency or necessity. Pre-action measures will become void if the main claim is not brought before the same court within 20

days of granting such pre-action relief.

If the claimant is eventually unsuccessful in its claim or the court later finds that the prejudgment attachment or freezing order was granted wrongly, it could be held liable for any damages caused to the debtor by the prejudgment attachment or freezing order.

Costs

The costs of the proceedings comprise the court fees for litigation, lawyers' fees, the fees of the legal representative and any fees incurred by experts (where relevant).

Each party is liable for the expenses and costs of the proceedings incurred at its request, which might include:

- those disbursements which originate directly from, or are immediately rooted in, the existence of the proceedings; and
- the party's costs relating to the payment of the fees of lawyers and legal representatives or deposits required for the submission of appeals (for example, the deposit for filing an appeal is EUR50).

The deposit and court fees for litigation are mandatory, fixed by law and payable when the claimant files its claim form. The amount of court fees varies depending on the type of proceeding and ranges between EUR150 and EUR1,200. The fee for ordinary proceedings is EUR300. Court fees are not usually reimbursed.

Court fees are fixed and must be paid for going to court and making use of the public service of the administration of justice though there are some exemptions (e.g., in cases which involve a decision in respect of fundamental rights). The events triggering the payment of a court fee in civil cases include:

- commencing a civil claim or enforcement proceedings in respect of an out-of-court settlement; or
- filing a counterclaim.

Class actions

In Spain, a judge will consolidate claims where they refer to:

- the same judgment;
- the same defendant; and
- the same facts.

Where this is done, only one judgment will be provided. The parties will, however, be able to appeal the consolidated judgment individually.

With regards to the rights and interests of consumers and end-users, the legally constituted associations of such consumers and end-users shall have authority in court to defend:

- the rights and interests of the associations and their members; and
- the general interests of consumers and users.

When the aggrieved consumers or end-users can be easily identified, the parties with authority to act as claimants in the proceedings are:

- the associations of consumers and end-users;
- the entities legally constituted for the purpose of representing aggrieved consumers or end-users; and
- the aggrieved groups.

Where the aggrieved consumers cannot be easily identified, the parties with authority to act as claimants in the proceedings are exclusively those associations of consumers and end-users who can legally hold such representation.

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Sweden

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Overview of court system

Sweden has a civil law tradition. There are three levels of civil courts in Sweden:

- District Courts;
- Courts of Appeal; and
- the Supreme Court.

Which District Court has jurisdiction to hear a dispute usually depends on the domicile of the defendant, but other criteria may apply depending on the type of dispute (e.g. in real estate disputes and consumer disputes).

Limitation

Should a party wish to commence proceedings in Sweden, it must bear in mind that a claim must be filed within the general ten-year statutory limit, except for business to consumer claims, which must be filed within two years. The time limit can be renewed by service of notification of the debt, service of application of summons or enforcement measures.

Procedural steps and timing

A typical civil lawsuit in Sweden starts with the claimant's summons application. The summons application must contain the claimant's requests for relief and the legal grounds to support them. It should also include a preliminary statement of evidence but, in practice, claimants are permitted to submit the statement of evidence once the matters in dispute have been clarified further to avoid unnecessary litigation costs.

A writ of summons is then issued by the court and served on the defendant. The defendant is normally granted two weeks for filing its statement of defense. Depending on the nature and complexity of the case, the court may request further clarification and / or elaboration from the parties in writing, usually within two weeks for each submission, and a preliminary court hearing is scheduled within a few months (although, in practice, the time may vary considerably depending on the court's workload). The main purposes of the preliminary hearing are to fix a timetable for the remainder of the case and to focus the case on the issues in dispute to avoid unnecessary evidence and pleadings. The judge also has a statutory obligation to try to settle the dispute, which is a fairly common outcome of preliminary hearings. After the hearing, the court will request the parties to submit their final statements of evidence and the main hearing is scheduled.

In a straightforward civil lawsuit, the time from serving the writ until the preliminary hearing will be 3 to 6 months, and the main hearing will usually be held in approximately 12 to 18 months. The judgment is handed down within a few weeks of the main hearing. The proceedings can, of course, be far lengthier if the case is complicated.

Legal representation is not mandatory in civil cases. Where parties are represented, it is not necessary for counsel to be admitted to the Swedish bar or even to hold a law degree to be allowed to appear.

Disclosure and discovery

In Sweden, the parties must present evidence to substantiate their claims but are free to determine which evidence they want to rely on. Practically everything is admissible and will be evaluated freely by the court, which will also decide the weight to give to each piece of evidence. The court will typically make no investigations of its own or assess evidence other than that which the parties have presented.

It is possible to request documents to be produced by the other party or third parties, but fishing expeditions are not permitted. The requesting party should identify the specific documents – or a narrowly defined category of documents – it is seeking and it must have a legitimate interest in seeking them. Furthermore, the applicant must show that the requested documents are relevant to the matter in dispute. The request is not limited to hard copy documents and can entail any (electronic) device holding information. After hearing the opposing party, the court will decide on the request. Attorneys and certain other professionals may refuse disclosure on the grounds of protecting legal professional privilege, and documents containing trade secrets may also be exempt from being disclosed. The court may only order a party to produce documents when they are requested by the other party, and thus a document production order cannot emanate from the court's discretion.

Default judgment

If a defendant fails to appear in the proceedings in person or through an attorney, the claimant may be awarded a default judgment. In the default judgment, the court will award the relief sought by the plaintiff in the statement of claim, unless the relief in question is evidently unfounded.

A defendant confronted with a default judgment has the option to object within one month to the court that has rendered the default judgment, in which case the matter will be re-opened.

Appeals

If a party wishes to appeal a judgment of a District Court, the party is required to seek leave to appeal from the Court of Appeal. The timeframe to request such leave is three weeks from the date of the District Court's judgment. After that timeframe, only extraordinary grounds for appeal are allowed. There are three such extraordinary grounds under Swedish law, namely if:

- a new trial is possible due to new evidence becoming available which could not have been brought in the first trial;
- the party for some extraordinary reason was unable to file an appeal within the stipulated time; and
- if the appellant alleges a serious procedural error.

The three grounds may all lead to an overruling of a judgment that has entered into legal force. It is, however, very rarely seen in Swedish civil law cases. The timeframe in which the Court of Appeal usually resolves appeals of District Court judgments is usually about 12 months.

The Supreme Court generally only deals with legal precedents (i.e. when it is deemed important to establish a precedent for the lower courts), and it is necessary to obtain leave to appeal in the Supreme Court. Leave to appeal must be sought within four weeks of the date of the Court of Appeal's judgment. The Supreme Court usually decides on leave to appeal within 3 to 4 months and resolves the appeal within 6 to 24 months of granting leave to appeal.

Interim relief proceedings

The Swedish judicial procedure provides tools to obtain interim relief. The (prospective) claimant may request interim relief during or prior to the initiation of substantive proceedings. The type of relief that may be granted will depend on the measures that are required to secure the claimant's interests until the case is decided. The most common types of interim relief are attachment or freezing of assets (for further detail see Prejudgment attachments and freezing orders) or prohibition to perform certain actions i.e. breach a non-compete clause.

Prerequisites for obtaining interim relief are:

- that the claimant can show that the claims have reasonable merit;
- that the relief sought would be in jeopardy unless the measure is granted; and

- that the claimant can provide sufficient collateral for the possible damage caused by the interim relief.

If the court is satisfied that the prerequisites are met, the relief can be granted before the defendant has been served. If the relief sought is granted, the claimant must initiate the proceedings or arbitration within one month.

A claim for interim relief may be granted within a day, and no later than within a week of filing the application for interim relief. The defendant may appeal against an interim relief judgment within three weeks. As in almost all Swedish court proceedings, representation by an attorney is not mandatory.

Prejudgment attachments and freezing orders

In Sweden, prejudgment attachments / freezing orders are types of interim relief. A request to attach / freeze assets of a debtor should be filed in the court that will hear the substantive claim (or is hearing the substantive claim if the request is made while the proceedings are pending). All assets that may be subject to enforcement (for example, immoveable and moveable assets, claims on third parties and shares) may be attached or frozen.

The judge will assess whether the evidence *prima facie* supports the creditor's claims and may decide not to hear the debtor's response before granting the measure (i.e. the measures may be granted *ex parte*) if there is a risk that the property will be disposed of in the meantime. A prejudgment attachment must be followed by a claim on the merits within one month, otherwise the attachment will be lifted. The creditor can be held liable for damage inflicted on the debtor by the attachment.

Costs

Court fees are low in Sweden (about EUR300). Payment of this court fee is made by claim, meaning that it will need to be paid once:

- by the claimant when filing the writ of summons; and
- by the defendant when (and if) filing a counterclaim.

Aside from the court fee for application, there are no more fees to the court in civil proceedings.

In terms of recovery of attorney fees and other disbursements the losing party will usually have to pay all of its own costs and the reasonable costs incurred by the opposite party. If the parties are successful and unsuccessful on different issues of the case, the court may order them to cover the costs *pro rata* in accordance with their relative success, or carry their own costs.

Class actions

In Sweden, class actions are heard by 21 designated District Courts, with at least one located in each county. Class actions based on environmental law are examined by one of the five District Courts that are designated as environmental courts. Disputes between consumers and business operators can be brought as group actions by the Consumer Ombudsman before the National Board for Consumer Disputes.

A class action may be filed by private individuals, organizations (in respect of consumer law or environmental law matters) and public entities such as the Consumer Ombudsman or the Environmental Protection Agency.

The prerequisites for initiating a class action include:

- that the group can be identified and defined;
- that the action is based on circumstances that are common for all the members of the group; and
- that a class action is appropriate.

There is no minimum number of claimants required before a group action can be brought. If the court finds that all of the above conditions are satisfied, the action will proceed as a group action under the Group Proceedings Act. Otherwise, the court will dismiss the action.

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Thailand

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Overview of court system

Thailand is predominantly a civil law jurisdiction but can be seen as a hybrid with influences from many legal systems, including the common law. As Thailand is a constitutional monarchy, the Constitution is regarded as supreme and thus, prevails over other laws.

The principal sources of Thai Law include:

- The Constitution of Thailand (the **Constitution**);
- Codified laws: four codes encompass the fundamental laws of the country, which are the Civil and Commercial Code, the Penal Code, the Civil Procedure Code and the Criminal Procedure Code;
- Acts, Treaties and Administration of Laws; and
- Judicial Decisions: not binding but in practice, the decisions of the Supreme Court of Justice are persuasive on itself and on lower courts.

The Constitution expressly sets out four types of courts:

1. The Constitutional Court of the Kingdom of Thailand;
2. The Courts of Justice;
3. The Administrative Courts; and
4. The Military Courts.

The Courts of Justice has a three-tier system, being (in order of seniority):

- the Court of First Instance (including Civil Court, Municipal Court, Courts of First Instance for Specialized Cases such as Central Intellectual Property & International Trade Court, Central Tax Court, Central Bankruptcy Court, Central Labour Court and Criminal Court, each of which has jurisdictions over specific types of cases);
- the Court of Appeal (including a Court of Appeal for Specialized Cases); and
- the Supreme Court.

Furthermore, Thailand does not have a jury system. A judge decides the outcome of a case based on the representations made by the parties. Litigation in the Thai Courts can only be conducted in the Thai language. Thus, any evidence for instance, documentary or otherwise, must be translated prior to submission to the court.

Limitation

The Thai Civil and Commercial Code prescribes limitation periods for the filing of cases, which vary according to the nature of the issues in dispute and the related law. The most commonly applicable limitation periods include:

- one (1) year for negligence and wrongful act claims, starting from the date on which the loss and the identity of the tortfeasor

becomes known (up to a maximum of ten (10) years from the date of the loss);

- two years from when a hire of works renumeration becomes due and payable, but five (5) years if the work in question was for the debtor's own business affairs; and
- ten (10) years from the date of breach for general commercial contracts.

Where there is no specific limitation period, a general ten-year limit applies from the date the cause of action arises. For a civil case, if the limitation period is not raised as a defence, Thai courts cannot raise the issue on their own volitions.

Procedural steps and timing

Pre-litigation Mediation

Pursuant to the amendment to the Thai Civil Procedure Code (No.323) B.E. 2563, a party may now apply to the court for an in-court pre-litigation mediation, without having to file a statement of claim. An application that briefly sets out the basis of the dispute would suffice. Upon submitting the application, the court will then invite the other party to consider joining the mediation on a voluntary basis. The mediation will be presided by a court-appointed mediator. If any agreement is reached, parties may directly enter into an in-court settlement agreement and the court may directly hand down a consent judgment based on such agreement.

The key feature of an in-court settlement agreement is that upon a breach, the non-breaching party may directly commence a legal execution proceeding (i.e., assets enforcement procedure) against the breaching party. In contrast, an out-of-court settlement agreement requires the non-breaching party to file a lawsuit and can commence a legal execution proceeding against the breaching party only upon a judgment.

If the limitation period of the underlying claim expires after the pre-litigation mediation has been filed or will expire within sixty days from when the mediation is concluded, the limitation period will be automatically extended for sixty days from when the mediation is concluded.

Proceedings

Before commencing a proceeding, the plaintiff is required to send a formal demand letter to the defendant. While this is not always a mandatory requirement, it is considered an accepted practice.

The plaintiff's lawyer files a complaint, often known in other jurisdictions as a Statement of Claim, in the prescribed form to the court. The complaint must contain:

- the name of the court;
- the names of the parties;
- details of the facts and allegations forming the basis of the claim; and
- details of the request for relief, setting out the orders that the plaintiff requests the court to hand down. The complaint does not need to contain all details and full particulars of the claim, provided there is sufficient information for the defendant to be able to respond to the claim and all facts on which the plaintiff wishes to rely on in later.

The court fee for filing a complaint is generally vary upon the quantum requested by the plaintiff.

A Power of Attorney and/or a lawyer appointment deed is required to admit legal counsels to a case. Although it is not mandatory, it is common practice to instruct legal counsel in Thai litigation proceedings.

Application Proceedings

Subject to the acceptance of the complaint, the court office will serve the court summons and a copy of the complaint to the defendant.

- The estimated time for service is usually within one (1) to two (2) months of filing the claim.
- In cases where the defendant is located overseas in a jurisdiction with a bilateral treaty concerning judicial cooperations, the service will be initiated through channels prescribed in such treaty. For instance: diplomatic channels, which usually take six (6) to twelve (12)

months.

- For the defendants locating overseas in a jurisdiction without such bilateral treaty, the service can be done through an international courier, which usually takes one (1) to two (2) months. An exception to this is when such overseas defendant operates a business in Thailand by itself or through a representative. In such case, service can be made to the overseas defendant's business operation or the representative's address in Thailand. The defendant may accept service of the proceedings by signing the court summons. In such circumstances they have fifteen (15) days from the date of service to submit a defence and/or counterclaim. In the event that the defendant does not sign the court summons, it is usually posted to the address of the defendant, who will have thirty (30) days to submit a defence and/or counterclaim.
- Parties can apply for extensions of time, typically thirty (30) days per instance. It is typical to see a Thai court granting the first 1-2 instances of such an application.
- The time permitted for filing a defence in consumer and labour cases will be different, despite the same method of service of complaint. Neither the court nor the defendant will serve the defence on the plaintiff, and therefore it is the duty of the plaintiff's lawyers to check with the court as to whether a defence has been filed with the court, and to request a copy.

Proceedings: Procedure

- A **case management hearing** generally takes place between sixty (60) and ninety (90) days after the Statement of Claim has been filed in court.
- **Witnesses**: it is common for parties to agree to submit a written witness statement for trial. Witnesses however are still required to take the stand to undergo cross-examination from the opposing party, otherwise the witness statement may not be admissible.
- The time between the initial hearing, which determines the issues in dispute, and the date of the final hearing can vary from four (4) months to eighteen (18) months, depending on the court's schedule.
- **Closing statements** are not mandatory and a judgment will still be handed down in cases where a party does not file a closing statement.
- The court issues a **judgment**, usually within one to two months of the end of the trial or the deadline for the submission of closing statements (if one has been provided). The first instance court process generally takes twelve (12) to eighteen (18) months from filing the initial claim to judgment.
- Parties can apply for **extensions of time** and request **adjournments of hearings** upon application to the court, which may be granted provided there is a reasonable explanation for the need for the extension or adjournment. Although not mandatory, the court encourages parties to participate in mediation.

Where the judgment concerns a monetary amount, the unsuccessful party must satisfy the judgment upon receipt of the enforcement order within the period prescribed in such order (generally within thirty (30) days). Regardless of whether all parties attend the judgment hearing, the enforcement order will be issued on the same day.

If the prescribed enforcement period has lapsed, the successful party must file an application with the court for a writ of execution and for the court to appoint an execution officer of the Legal Execution Department. Upon receipt, the execution officer will be appointed. The execution officer in principle plays a passive role in a legal execution proceeding. It is the duty of the judgment creditor to identify and locate the debtor's assets. Upon sufficient proof of the existence and the whereabouts of the debtor's assets, the executing officer will attach the debtor's assets. They may liquidate them at auction, depending on the type of asset.

In the course of a legal execution proceeding, if there is reason to believe that the judgment debtor has more assets than known to the judgment creditor or the whereabouts of the same are unknown, the judgment creditor may apply to the court to conduct a debt inquiry. The judgment debtor and relevant persons may be summoned to testify as to the existence or the whereabouts of the judgment debtor's assets.

Appealing a Court of First Instance's judgment does not constitute a ground for a stay of execution. A stay of execution should be requested separately from the Court of Appeal. Alternatively, a party at risk of stay of execution, typically places a security deposit in the amount that corresponds with the judgment debt in order to request for a suspension of execution. By law, the Court of First Instance is the competent court that grants the suspension if the security deposit sufficiently covers the judgment debt.

Recognition and Enforcement of Arbitral Awards

Thailand is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e., the New York Convention). To enforce a foreign arbitral award, the applicant must first have the award recognized by the Thai court.

- A recognition application has to be filed to the Thai court within three years when the award become enforceable.
- The respondent may contest the recognition application on limited grounds.
- Upon a successful recognition application, the court will hand down a recognition judgment and an enforcement order against the respondent. The processes following the issuance of enforcement order and writ of execution in a civil proceeding will then follow.

Alternatively, a party may also apply to the Thai court to set aside an award. The opposing party to such proceeding may also challenge such an application.

Enforcement of Foreign Judgment

Thai courts do not recognise judgment of foreign courts. Party seeking to enforce a foreign judgment against a party located in the Thai court's jurisdiction will in principle have to represent the case again in front of the Thai Courts. The foreign judgment may be adduced as evidence in such a lawsuit, but it cannot be guaranteed to be determinative of the results. The probative value of such foreign judgment may vary depending on the circumstances, facts or the evidence adduced in the case and the findings' rationale.

Disclosure and discovery

There is no discovery or disclosure process in a Thai Civil proceeding. However, if one of the parties is aware of a specific document that the opposing party has in its possession that is relevant to the proceedings, it can apply for and obtain a subpoena from the court for that specific document.

The onus is on the party applying for the document request, to show that the specific document is relevant to the issue in dispute. The court will often require the applicant to provide the title and subject matter of the document and its date of issue.

The court may also order a party to adduce a specific document at its discretion.

Default judgment

A party may file for a default judgment if the defence is not filed within the prescribed deadline. The court has the discretion whether to hold an *ex parte* inquiry hearing to hear the plaintiff's case; or to directly issue a default judgment. Following which, the defendant has fifteen (15) days from the date of the default judgment to object and request a retrial.

Appeals

The Court of First Instance is an umbrella term for the trial courts that conduct the original trials and render the first decision. A party may appeal a Court of First Instance judgment to the Court of Appeal within one month of the judgment being issued.

To appeal to the Court of Appeal, an applicant must satisfy the following conditions:

- the claim must have a value exceeding THB50,000 (unless the Court of First Instance has indicated that there should be a right of appeal regardless); and
- no new evidence or arguments can be submitted at the appeal stage unless the matter concerns public order.

The Court of Appeal will only reconsider the issues specifically raised by the parties, they will not re-consider the entire case, this also applies to the Supreme Court. A judgment of the Court of Appeal is usually final but permission to appeal to the Supreme Court can be obtained on limited grounds. An application for such permission should be made within one month of the decision being handed down by the Court of Appeal.

The Supreme Court may accept an appeal if they are satisfied that the appeal raises a significant question for the court to consider, including if:

- the question is one involving public interest or public order; or

- the question needs to be answered, in order to improve the interpretation of the law.

The Civil Procedure Code does not prescribe a specific timeframe for the Court of Appeal or Supreme Court to render decisions. In practice, the appellate courts would take at least six months from the submission of all pleadings to consider an appeal. It is not uncommon for the Supreme Court to take more than two years to consider an appeal. Consumer protection legislation, however, provides that the Court of Appeal should render its decision in consumer cases within a year from the submission of all pleadings. Filing an appeal does not automatically suspend the effect of the decision rendered by the Court of the First Instance, the losing party will have to request the court to suspend the judgment enforcement.

Cases under the jurisdictions of the Specialized Courts such as cases that concern issues of laws on labor, bankruptcy, international trade and intellectual property have their own bespoke criteria for an appeal to the Court of Appeal for Specialized Cases and final appeal to the Supreme Court.

Interim relief proceedings

Interim orders may be granted by the court. These orders include restraining orders, possessory orders and orders requiring government agencies to suspend or revoke administrative decisions. Search orders are not available for civil proceedings.

A party may file an application for interim relief before, during or after the judgment (pending execution).

A party may also file for emergency relief which is considered on an *ex parte* basis. If accepted, the court will consider and determine the application on the same day.

The Thai courts impose a high threshold to obtain an emergency injunction. An applicant will need to prove the following:

- an imminent threat of serious harm;
- the likelihood of success of challenging the merits of the claim, against which the emergency application is being sought; and
- that the respondent has no or limited assets in Thailand against which the applicant may seek to eventually enforce a judgment, once the case is concluded.

The defendant may immediately file an application requesting the court to reverse the emergency injunction. Such application may also be made *ex parte* by permission of the court.

It is not mandatory for parties to seek legal representation in interim relief proceedings. In practice, however, it is very common for a legal counsel to be instructed.

The interim relief can be appealed, by the parties that disagree with the order, within thirty (30) days from the date it was handed down. The appeal would not suspend the relief.

Prejudgment attachments and freezing orders

The pre-judgment attachments and freezing orders are categories of interim relief. A plaintiff is entitled to file, with its complaint or at any time before judgment, an *ex parte* application requesting the court for an attachment order. The plaintiff must file such a request at the same Court of First Instance that it filed its complaint at.

Any objects or assets can be attached, including (without limitation): immovable and movable assets, IP rights, claims on third parties and company shares.

The court must generally be satisfied that:

- the plaintiff has a fair and reasonable cause and sufficient grounds for applying for the protective measures; and
- the defendant intends to remove the whole or part of the property in dispute from the jurisdiction of the court, or transfer, sell or dispose of such property, in order to delay or obstruct the execution of any order made against it or in order to prejudice the plaintiff.

The court may also grant such an order on any other ground that it thinks is fair and reasonable.

The request for a prejudgment attachment and freezing order will need to be made in parallel with the claim on merits.

The applicant of an attachment order as such can be held liable for any damages caused to the defendant by the attachment on the following grounds:

- the applicant is unsuccessful and had misled the court into believing that its application had merit; or
- regardless of whether the applicant is successful or not, it misled the court into believing it and satisfied the grounds to request for interim relief.

Costs

A court filing fee must be paid by the plaintiff when submitting a claim. The fee is calculated as a percentage of the claim value: 2% of the claim amount, for actions up to THB50 million, of the fee will not exceed THB200,000. Any amount above the THB50 million threshold, an additional 0.1% added to the claim amount. Most fees can now be paid online.

The court has discretion to award costs to the prevailing party, and in principle court fees are recoverable in the event of a successful claim. However, the legal fees recoverable by the successful party are only nominal. In deciding the amount of lawyers' fees to be reimbursed, the court take into consideration the complexity of the case, the time spent and the amount of work completed by the lawyer whilst handling the matter.

The amount of legal fees that can be claimed is generally limited to a maximum of THB 500,000. In practice, it is often much less.

The defendant can apply to the court for an order requiring the plaintiff to deposit money or security with the court for costs and expenses if either:

- the plaintiff is not domiciled or does not have a business office situated in Thailand;
- does not have any assets in Thailand; or
- there is a strong reason to believe the plaintiff will evade payment of costs and expenses, if it is unsuccessful.

Third party funding and contingency fees arrangements for lawyers are neither permitted nor encouraged in Thailand.

Contingency fee arrangements are unenforceable in Thailand as the Supreme Court have found them to be against public order and good morals. The Supreme Court has also found that allowing an unrelated third party to fund a litigation in return for benefits would be against public policy.

Class actions

As of 8 December 2015, all courts, except the Municipal Courts (i.e. local district courts which handle small claims and minor criminal cases that may be dealt with by fines and penalties), have jurisdiction to hear and determine class action lawsuits.

Pursuant to the Civil Procedure Code of Thailand, the courts may consider a class action lawsuit to take place on the following:

- Cases involving a group of persons who have the same interests and rights;
- The claims are related to breach of contract, to tort, and any other laws including labour, environment, consumer protection, securities and stock exchange and trade competition;
- The class consists of numerous individuals and so to conduct a regular lawsuit would be impractical and complicated; and
- The assigned lawyer is to demonstrate their competency in protecting the rights of all members of the class.

The court has the authority to consider whether the class action should be heard, define the scope of a class or inquire or terminate the same. During this phase, if class members decide that the class action remedy does not best suit their needs, they have a period of forty-five (45) days to withdraw the class action.

The court proceeds to appoint a class action officer, who assists the court by conducting mediation, collecting and verifying evidence, meeting with witnesses and taking statements before and during the trial. From a procedural standpoint, the trial portion of class actions is similar to ordinary civil actions, whereby the same processes are used for mediation, the submission of evidence, hearing of witnesses and the delivery of a judgment.

A judgment binds all parties and members of the group. The plaintiff's lawyers are also entitled for relief on legal fees and costs, not exceeding 30% of the award. However, historically, relief awarded for such fees by Thai courts, have been very low.

Upon the rendering of a judgment, the plaintiff (on behalf of the group) may file an appeal. There are no individual appeal rights. Such appeal can be made either to the Court of Appeal or to the Supreme Court as with regular proceedings.

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UK - England & Wales

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Overview of court system

The UK has three distinct legal jurisdictions:

- England and Wales;
- Scotland; and
- Northern Ireland.

Each jurisdiction has its own legal system, distinct history and origins. There is no concept of UK law.

England and Wales civil system is a common law jurisdiction, where case law (in the form of published judicial decisions) is of primary importance. The court system in England and Wales provides an effective, relatively efficient and reliable process for dispute resolution which makes it one of (if not the) most popular jurisdiction in the world.

Most commercial cases start in the High Court. This is made up of three divisions: Queen's Bench; Chancery; and Family. The Queen's Bench division contains a number of specialist courts, namely the Admiralty, Commercial, Circuit Commercial (formerly Mercantile), Technology and Construction, Administrative and Planning Courts and the Queen's Bench Civil Lists. The Chancery Division deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. The Chancery division also includes three specialist courts: the Insolvency and Companies Court; the Patents Court; and the Intellectual Property Enterprise Court (IPEC). The Financial List is a specialist list set up to handle claims related to the Financial Markets and operates as a joint initiative involving the Chancery Division and the Commercial Court, handling claims of GBP50 million or more which require particular expertise in the financial markets. The Business and Property Courts have also been set up as an umbrella bringing together the work of the Chancery Division and specialist courts of the Queen's Bench Divisions of the High Court. Judges allocated to a particular division or specialist court typically have specialist expertise in the legal disciplines which those courts deal with.

A number of separate tribunals operate alongside the courts and share their appeal system, such as the Employment Tribunal, which hears employment cases.

Appeals from the High Court are to the Court of Appeal then UK Supreme Court, which is the ultimate court of appeal in England and Wales (or, exceptionally, directly from the High Court to the Supreme Court).

Case management in civil cases in England and Wales is subject to procedural rules. For the most part, these rules are contained in the Civil Procedure Rules (known as the CPR) and accompanying Practice Directions. A number of the more specialized courts, such as the Commercial Court, also have their own rules and guidelines.

Limitation

The Limitation Act 1980 provides that claims based on torts (i.e. civil wrongs) or breach of contract must be issued within six years of the cause of action arising - this being either the date on which the negligent act or omission occurred, or the date on which the breach of contract occurred respectively. However, a different limitation period may apply where, for example, the claim is based on the breach of a

deed (in which case a 12-year limitation period applies).

Procedural steps and timing

Proceedings are initiated by a claim form which must be filed at the relevant court and served on all parties to the case. This is either accompanied or followed by particulars of claim, which explain the claim in more detail. Both the claim form and the particulars of claim must be sent to the defendant within four months of issue.

There is no mandatory requirement that a party has legal representation, and parties are at liberty to represent themselves as litigants in person. However, the UK Supreme Court has held that "the [court] rules do not in any relevant respect distinguish between represented and unrepresented parties" and, as such, litigants in person will not be given special treatment with regards to compliance with the relevant court rules or orders. Therefore, save in very low value claims, both parties will usually have legal representation.

The first step for a defendant is to acknowledge service of the claim. Under Part 7 of the CPR, the time limit to acknowledge service is 14 days from the service of the particulars of claim (at which point it can, if it wishes, indicate its wishes to challenge the jurisdiction of the court).

If the defendant does not challenge the jurisdiction of the court or the relevant application is dismissed, the parties then proceed to exchange pleadings, which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party. These can include:

- the defence, which must be served within 14 days of the claim being issued or, if an acknowledgment of service is filed, within 28 days of the acknowledgment of service;
- counterclaims, which usually accompany the defence; and
- replies, which are optional and for which there is no definite time limit.

If an allegation has been made which is unclear, parties can also request further information.

In most cases, disclosure takes place after an order has been made at the case management conference (see further below). Parties then go onto prepare evidence for a final hearing of the dispute. This will almost always include witness statements and may include expert evidence.

Throughout the case, the court will exercise its wide case-management powers to ensure the efficient management of the proceedings. This is likely to include a case-management conference, a pre-trial review, directions orders (regarding the conduct and timetable for the case up until its final hearing) and consideration of disclosure and costs issues.

Timeframes for each stage of proceedings (and the case as a whole) vary from case to case. Most cases take a minimum of 18 months to two years from start to finish, assuming no appeal. Some will take longer, although fast-track procedures are sometimes available.

A defendant can also apply for summary judgment and/or strike out of a claim, which allows the court to decide some or all of a case without a full hearing. The defendant will have to prove that the claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case (or a particular element of it) should be disposed of at full trial.

In order to succeed, a claimant must establish that, on the balance of probabilities (i.e. that it is more likely than not) that its position is correct and that it can satisfy all of the elements of the causes of action on which its claim is based.

Disclosure and discovery

Subject to some very narrow exceptions, each party to civil litigation in England and Wales will have to give disclosure to the other parties. The rationale behind this is that, in order for justice to be done between opposing parties, all relevant material must be out in the open. Privileged documents must be disclosed (i.e. stated to exist or have existed) but other parties do not have a right to inspect them.

From 1 January 2019, new disclosure rules are being applied to existing and new proceedings in the Business and Property Courts in London, Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle for a period of two years (although certain proceedings such as competition claims and claims within the Intellectual Property and Enterprise Court fall outside the scope of the new rules).

The new rules envisage a more bespoke approach to disclosure, tailored to fit the specific needs of the individual case, with much of the work involved in data mapping being carried out in the run-up to the case management conference, and set out in a document called the

Disclosure Review Document. There are express obligations (referred to as the Disclosure Duties) upon the parties and their legal representatives in relation to the preservation of documents and compliance with any order for disclosure as well as specific provisions of the rules.

Generally, when parties serve their statements of case they will be required to provide Initial Disclosure to the other parties by providing them with copies of key documents. Depending upon the nature of the dispute, the parties may regard this as sufficient. In more complex matters, there is the option for the parties to request Extended Disclosure by choosing a model for disclosure from a range of graduated options, including:

- Model A: Disclosure confined to known adverse documents (no search required);
- Model B: Limited disclosure (no search required);
- Model C: Request-led, search-based disclosure;
- Model D: Narrow, search-based disclosure, with or without Narrative Documents; and
- Model E: Wide search-based disclosure.

Any order for Extended Disclosure (if any) will be made at the case-management conference and a party must comply within the time ordered by serving various forms and lists and producing the documents over which no claim is made to withhold production.

The provisions of Part 31 of the CPR continue to apply to cases that fall outside the scope of the new disclosure rules. The concept of standard disclosure requires the parties to disclose the existence of all documents which are, or have been, in their control and on which they rely in support of their case as well as those which adversely affect their own case, adversely affect another party's case or support another party's case (together with any documents required to be disclosed by a relevant practice direction). In many commercial cases, the court is able to select an appropriate type of disclosure from a broader menu of options (which include disclosure on an issue by issue basis). In practice, the parties will often seek to agree between themselves a workable approach to disclosure, including their plans for handling disclosure of electronic documents, and then seek the court's approval.

Under both sets of rules, the disclosure order is usually made at the case management conference, after the close of pleadings, when the points of dispute between the parties have crystallized. In certain circumstances, pre-action disclosure, or disclosure at a different stage, may also be ordered.

Default judgment

Default judgment can be applied for in circumstances where a defendant has failed to file:

- an acknowledgement of service within 14 days of service of the claimant's particulars of claim); or
- a defence within 14 days of the claim being issued or, if an acknowledgment of service is filed, within 28 days of the acknowledgment of service.

The effect of a default judgment is the early determination of the claim. A defendant may seek to resist an application for default judgment by challenging the basis of the application. However, as a default judgment application amounts to a recognition of procedural failings and that the relevant time period has expired, these are difficult to challenge.

Appeals

Judgments of civil courts can be appealed. However, appeals are usually limited to questions of law and not issues of fact. A party wishing to appeal will need the permission of either the court which has given judgment, or the appropriate appellate court before its appeal can proceed. Permission for an appeal will only be given where the court considers that the appeal has a real prospect of success, or there is some other compelling reason for the appeal to be heard. Decisions of the High Court may be appealed to the Court of Appeal. Decisions of the Court of Appeal may be appealed to the UK Supreme Court where they concern an arguable point of law of general public importance.

There are prescribed time limits for filing a notice of appeal and these vary depending upon the type of appeal that is being brought. In the majority of cases, the time limit is 21 days to appeal against a county court or High Court decision. However, there are a number of exceptions, for example, 28 days if it is an appeal against an Upper Tribunal decision or 14 days if it is an appeal against a Competition Appeal Tribunal decision.

The timeframe for an appeal to be resolved depends on the complexity of the case, and the court's workload. In the Court of Appeal: (i) a relatively urgent appeal may take around six months; and (ii) an appeal on a non-urgent complex commercial matter may take between 12 to 18 months, from the moment when permission to appeal was granted. Appeals to the Supreme Court similarly may take around 12 to 18 months.

Interim relief proceedings

A range of interim remedies are available to parties to legal proceedings. Interim remedies are provisional measures generally granted with a view to preserving the status quo, or preventing the dissipation of assets. Common applications for interim remedies include: interim declarations; interim injunctions (injunctions are orders prohibiting a person from doing something or requiring a person to do something); orders for the detention, custody, preservation, inspection, sampling of relevant property; sale of relevant property which is of perishable nature or which for any other good reason it is desirable to sell quickly; freezing injunctions; search orders; orders to provide information about assets; injunctions restraining foreign legal proceedings; applications for security for costs; applications for orders for interim payment on account of any damages, debt or other sum the court may hold the defendant liable to pay; applications for further information; extensions of time; and specific disclosure.

An order for an interim remedy may be made at any time, including: (i) before proceedings are started; and (ii) after judgment has been given. However, the court may only grant an interim remedy before proceedings are started if the matter is urgent or it is otherwise desirable to do so in the interests of justice. If the court grants an interim remedy before a claim has been started, the court should give directions requiring a claim to be commenced.

As a general rule, no order should be made in civil proceedings without notice to the other side unless there are good reasons for departing from the general rule that notice must be given. An application for interim relief must be supported by evidence, unless the court orders otherwise. In ex parte (i.e. without notice) applications, relief can generally be obtained within a matter of days. However, it is possible to obtain an interim order (including an interim injunction) at a few hours' notice if the urgency of the matter justifies it. If the court grants the ex parte application, the defendant is provided with an opportunity to object to the granting of relief at a subsequent hearing (referred to as the return date). At this hearing, the defendant would seek to persuade the court that any order made should not be continued.

The criteria for obtaining relief varies depending on the type of relief sought but the overarching principles the court will consider when it comes to interim injunctions, for example, include whether there is a serious issue to be tried. The evidence must show that the applicant has a real prospect of succeeding in its claim and, if so:

- whether, if the applicant were to be successful at trial, damages would be an adequate remedy;
- whether, if the respondent were to be successful at trial, damages under a cross-undertaking to pay damages by the applicant in return for an interim injunction would be an adequate remedy; and
- if there is a question as to the adequacy of damages to either or both parties, whether it would be just and reasonable to grant the relief sought.

The parties can appeal the court's decision on the application for interim relief to a higher court. The appellant will usually need to seek permission within 21 days of the date of the initial decision. Where the lower court refuses the application for permission to appeal, a further application may be made to the appeal court. Such application must be filed within seven days after service of the notice from the lower court that permission to appeal has been refused. Either way, permission will only be granted where the appeal has a real prospect of success, or where there is some other compelling reason why the appeal should be heard.

Again, legal representation is not mandatory, although as applications for interim relief can be relatively complex, it is ordinarily the case that both parties are legally represented.

Prejudgment attachments and freezing orders

Freezing orders are a type of interim relief. Like other types of interim relief, a freezing order can only be granted before proceedings are commenced if the matter is urgent or it is otherwise necessary to do so in the interest of justice. Where no claim form has been issued, the applicant will be required to undertake to the court that it will issue a claim form immediately or as directed by the court.

Freezing orders can be obtained from the courts in respect of assets within England and Wales or beyond where the respondent has

insufficient assets within the jurisdiction to cover the amount of the claim.

Freezing orders are typically applied for without notice and, if granted, will usually be made for a period of time following which a return date will be fixed for a full, with notice hearing. The return date, usually between seven to 14 days from the grant of the freezing injunction, provides the respondent with an opportunity to challenge the order. A worldwide freezing order will cover assets anywhere in the world, though local enforcement proceedings will be required to give it effect.

All types of assets may be frozen, including bank accounts, shares, motor vehicles and land. The assets should not be perishable but may be intangible, for example goodwill or after-the-event insurance premium.

An application must be made to the court where the claim was started. The court has discretion as to whether to grant a freezing order and will do so only if:

- the applicant has a cause of action against the respondent;
- the applicant has a good arguable case;
- the respondent has assets that exist within the jurisdiction;
- there is a real risk of dissipation of those assets without the freezing order; and
- it is just and convenient for the court to exercise its discretion in favor of the grant of the freezing order.

The applicant will usually also have to provide an undertaking in relation to damages to the court, agreeing to compensate the respondent if it later turns out that the applicant was not entitled to the freezing order and the respondent has suffered loss in the meantime.

Costs

Court fees for commencing a claim vary, but are broadly proportionate to the size of the claim. For example, the court fee for a claim of up to GBP300 is GBP35 or GBP25 if filed online. For a claim of between GBP10,000.01 and GBP100,000, the court fee is 5.0% of the total claim amount and for a claim for in excess of GBP200,000 it is a flat fee of GBP10,000. The costs incurred by each party will vary from case to case, depending on factors such as the value and complexity of the case, the duration of the case and the costs associated with their legal representatives.

As a general rule, the successful party in a litigation will recover its costs from the unsuccessful party. However, the court has a wide discretion to order otherwise. Where each litigant has enjoyed some success in the proceedings, courts may make costs orders that reflect the litigants' relative success. Courts can also depart from the general rule by requiring a successful party to bear their own costs where there is good cause to do so (e.g. when a successful claimant is awarded only nominal damages).

Where a party who has made an offer to settle under the CPR's Part 36 (Offers to settle) regime achieves a result which is better than the offer it made, it may recover more in costs than would otherwise have been the case. Conversely, if a party's costs have exceeded any budget which it has been required to submit to the court, it may be penalized for doing so. Successful parties will almost never recover all of their legal costs, which are assessed to establish whether they are proportionate and reasonably incurred.

Class actions

There is no direct equivalent in the UK to the US-style class action, except in the competition context, which are managed by the Competition Appeal Tribunal. Nonetheless, there are a range of procedures available for non-competition collective litigation. These are as follows:

- Mass Claims: a number of claimants bring a claim together, where the claims can be conveniently disposed of in the same proceedings.
- Group Litigation: multiple claims arising from common issues of law or fact can also be managed together with the court's permission under a group litigation order (known as GLOs).
- Representative Proceedings: in some cases, one or more claimants can also represent other claimants with the same interest in the proceeding.

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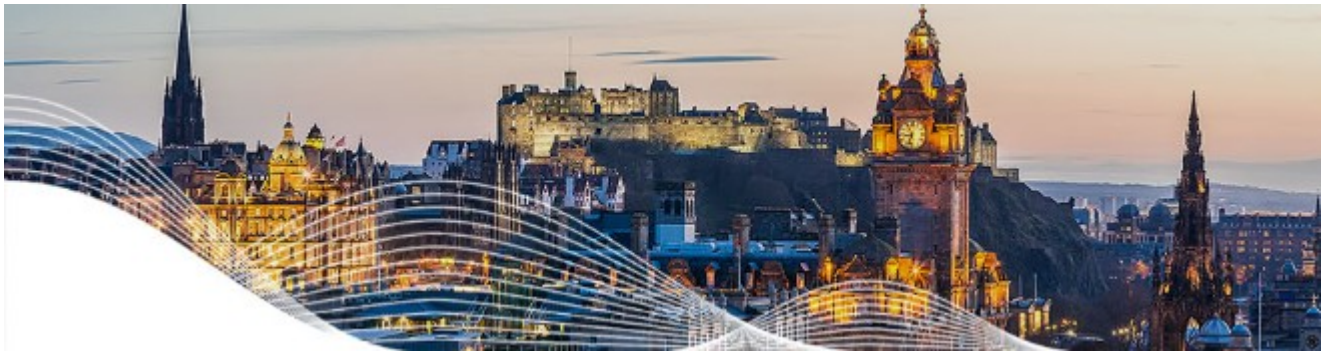

UK - Scotland

Last modified 18 October 2023

Overview of court system

The UK, judicially, consists of three jurisdictions:

- England and Wales;
- Scotland; and
- Northern Ireland.

There are important differences between all three jurisdictions. This report exclusively refers to the legal system in Scotland; Scots law.

Scots law is influenced by both civil law and common law, as it has characteristics of both approaches. Scots law consists of four sources of law: legislation, legal precedent, specific academic writings and custom. The doctrine of supremacy of Parliament means that legislation enacted by Parliament takes precedence over case law. However, case-law also interprets the meaning of legislation where it's not clear. Decisions of higher courts are binding on lower courts.

The civil court system in Scotland is split between the Court of Session, Scotland's supreme civil court which sits only in Edinburgh and where the most complex and valuable disputes are heard, and the Sheriff Courts, located in districts throughout Scotland and where lower level claims are determined. There are 39 Sheriff Courts in total.

The Court of Session is split into the Outer House (first instance) and Inner House (appeal) courts. A single judge, known as a Lord Ordinary, usually hears cases in the Outer House and a bench of three judges usually hears Inner House appeals. The Sheriff Courts are Scotland's local courts and are presided over by a single judge called the Sheriff. Appeals from the Sheriff Court are to the Sheriff Appeal Court or to the Inner House, with permission of the Sheriff Appeal Court. A final appeal is available from the Inner House to the UK Supreme Court.

Court proceedings are conducted in the English language, but litigants can ask the court to use Scots Gaelic, either to give evidence or make submissions. If the application is granted an interpreter will be provided by the court.

Disputes with a total value of over GBP100,000 may be started in either the Court of Session or the Sheriff Court. Disputes with a total value of up to GBP100,000 may only be commenced in the Sheriff Court.

Limitation

The prescriptive (limitation) period for contractual and tortious claims in Scotland is five years. For personal injury claims it is three years. In both cases the prescriptive period runs from the date the loss, injury or damage occurs, although commencement can be delayed where the defender doesn't know a loss has occurred, and a claim must be raised and served on the other party within this period. After the time period has expired, the claim is said to have prescribed and the right to enforce is lost.

Procedural steps and timing

In Scotland natural parties can represent themselves at all stages of court proceedings. Corporate entities must ask the court for permission for a director or partner to represent them. If permission is refused, then the entity would require to be represented by a solicitor.

The main procedural steps in ordinary procedure are similar in the Court of Session and the Sheriff Court. In the Court of Session, the pursuer (claimant) commences the claim by preparing a summons. In the Sheriff Court, the initiating document is the initial writ. An individual may act as a litigant in person in either court. However, companies and other business vehicles must obtain permission from the court to be represented by a lay representative (such as a director).

The summons or initial writ is lodged with the court in order to obtain a warrant to serve. A warrant to serve is the court's authority to commence proceedings. Once the authority is obtained the initiating document is served by the pursuer on the defender (respondent). The defender has 21 days (42 days if outside the EU) to consider the claim. If the defender intends to defend the claim it must then lodge defences within either 7 or 14 days.

An adjustment period of approximately eight weeks usually follows where the pursuer and defender refine their respective pleadings. The case then calls in court for a procedural hearing. At that hearing, the judge reviews the pleadings and decides how the dispute is to be resolved.

Usually this is by either:

- the fixing of a proof, a trial on the facts of the case; or
- the fixing of a debate, a hearing on a point of law which may require to be determined before evidence can be led.

Timeframes for actions vary greatly depending on the complexity of the case. Undefended actions are generally determined within a month, whereas complex defended cases can take 18 months or more.

A fast-track, judge-managed procedure is available for commercial disputes in the Court of Session and in some Sheriff Courts.

In the vast majority of cases, judgments are in writing and are generally delivered within around three months of any substantive hearing.

Disclosure and discovery

There is no obligatory disclosure of documents in court proceedings in Scotland. Litigants need only disclose documents that they seek to rely on to prove their case. The court also has the discretion to order a party to submit certain additional evidence.

Parties seeking further documents held by the other side or by any third party must apply to the court for a disclosure order specifying the document or category of documents that they require. The order will only be granted if the documents specified are relevant to the case. Legal professional privilege can be claimed by a client to avoid disclosure of documents. Furthermore requests for disclosure that amount to fishing for evidence are not permitted.

A party contemplating litigation in Scotland may want to see, or at least preserve, relevant information that will be of assistance in pursuing a claim before commencing proceedings. A statutory procedure exists to apply for disclosure of documentation before proceedings are commenced. In order to obtain such material, an applicant must satisfy the court that it has a prima facie case, proceedings are likely to be commenced, and the documents that are pursued will assist in further specifying or detailing the pleadings.

It is possible to obtain an order for recovery of documents and/or property without the knowledge of the party holding the material – often by way of undertaking a dawn raid – where there is a risk that prior warning would cause documents or property to be destroyed or amended, raising concerns as to whether recovery could be made.

Default judgment

Decree by default is available in Scotland at the request of a party where the opposing party fails to comply with a procedural requirement such as failing to attend at a hearing. Decree in absence is available where the defender fails to indicate an intention to defend the claim in a timely manner. In considering any application for decree by default the court will usually exercise its discretion to ensure that the interests of justice are met. Decree will therefore not usually be granted against a defaulting party where there is a reasonable explanation for the default and there is a proper claim or defence. A decree by default may be appealed within 21 or 28 days using the

reclaiming procedure in the Court of Session or the appeals procedure in the Sheriff Court. A defender can seek to have a decree in absence recalled (withdrawn) within seven days of the decree being granted in the Court of Session or prior to the decree being implemented in the Sheriff Court.

Appeals

Judgments of civil courts in Scotland can be appealed to a superior court. Appeals from the Sheriff Court are to the Sheriff Appeal Court. Appeals from the Outer House are to the Inner House and from the Inner House there is the right to request that the Inner House allow the appellant to make a further appeal to the UK Supreme Court in London. In the event such a request is refused, a party can ask the Supreme Court directly for permission to appeal. Such permission will normally only be given if the appeal raises a point of general public importance.

The time period in which an appeal can be made in the Sheriff Court is 28 days, although in cases where leave is required, permission to appeal must be obtained within seven days. Appeals from the Sheriff Appeal Court to the Inner House of the Court of Session can only be made with the permission of either court. Appeals from the Outer House to the Inner House in respect of a final decision must be made within 21 days and appeals from the Inner House to the UK Supreme Court require an application for leave to be made within 28 days of the decision being appealed against being made. Generally, the UK Supreme Court will hear an appeal within 12-15 months of permission being granted, and the judgment follows usually within 12 weeks of the hearing.

The lodging of an appeal in a case has the effect of opening-up all prior decisions of the court for review. In most cases, an appeal will be on a point of law and evidence will not be heard again. In certain circumstances, the court can order additional evidence to be heard to supplement the case. Once a judgment is appealed it can no longer be enforced subject to limited exceptions. Appeals can be upheld or refused, and the court's reasoning will be detailed in the judgment.

Interim relief proceedings

In Scotland, interim relief proceedings are subject to statutory and court rules. The relevant court procedure depends on the type of relief sought and the court in which the application is made. Both the Court of Session and the sheriff court may grant interim relief.

In Scotland, there are four broad categories of interim relief available:

- measures to preserve evidence (for further details on preservation of documents, see Disclosure and discovery);
- measures to secure assets in relation to money claims (for further details see Prejudgment attachments and freezing orders);
- preservation of assets in the event of insolvency; and
- measures to protect a party's right against a wrongdoing (also referred to as interim interdict).

Remedies in respect of interim relief decisions, including appeal processes, are available but they vary depending on the category of interim relief involved and the court making the decision

Natural parties can represent themselves in interim relief proceedings (and other proceedings). Corporate entities must ask the court for permission for a director or partner to represent them. If permission is refused, then the entity would require to be represented by a solicitor.

Preservation of assets in the event of insolvency

An ex parte (i.e. without notice) application may be made as part of insolvency proceedings for an interim order to appoint an insolvency practitioner to preserve assets pending a formal appointment being concluded. This measure is only available where there is a risk that those in control of the company or organization concerned may dissipate assets if they are given advance notice of the insolvency proceedings. The procedural requirements vary depending on the insolvency process being pursued and the court in which the application is being made.

Interim interdict

An interim interdict is a court order requiring a person not to do something pending the resolution of a claim for interdict. It is the equivalent of an interim injunction in England.

The party seeking an interim interdict must demonstrate to the court that there is a prima facie case and that "the balance of convenience" favors the granting of the order. The order can be sought and obtained on an urgent basis by making an application to the court. If an order is sought urgently, these can usually be heard by the court within 24 hours. It can also be granted without notice.

However, if the defender to an interim interdict application has lodged a caveat at court (effectively an early warning device) the court will require that the defender be made aware of the application and be given a right to be heard by the court before the order is granted.

If the order is granted ex parte, then the defender may apply at anytime to have the order recalled (withdrawn). If the order is granted with both parties in attendance at the hearing, the defender must show a material change in circumstances to have the order recalled. If the defender wishes to appeal, on the facts or the law, then the timeframe is within 14 days of the decision.

It is not necessary for a party to be represented by a solicitor at interim relief proceedings, but given the legal arguments necessary, legal representation is normal. Individuals can represent themselves and companies and other business vehicles can apply for permission to be represented by a lay representative (such as a director).

Prejudgment attachments and freezing orders

Interim attachment is a type of interim relief measure. It is a remedy available in Scotland to freeze a party's corporeal moveable assets (with certain exceptions) pending the outcome of legal proceedings. To obtain the remedy the applicant is required to demonstrate, on the balance of probabilities:

- a prima facie case on the merits;
- that there is a real and substantial risk that any judgment in favor of the applicant would be defeated or prejudiced by the debtor's insolvency, or the debtor disposing of the assets in some manner; and
- that the order is reasonable in the circumstances.

The remedy can be applied for at any time during the progress of a court action or shortly before one commences. The order can be obtained without notifying the other party in advance (ex parte), but in such circumstances a subsequent hearing is fixed to enable the other party to be heard. If an interim attachment order is executed wrongfully the creditor can be held liable in damages to the debtor.

Please note that only corporeal moveable property may be subject to an interim attachment order. Bank accounts and funds in the hands of a third party may be subject to an arrestment on the dependence of an action. Arrestment prevents the debtor from disposing of funds or goods held by a third party. Inhibition prohibits the debtor from disposing of, or otherwise transacting with, heritable property (real estate), pending the outcome of a court action. The criteria for obtaining an arrestment or inhibition on the dependence of the action are the same as those for interim attachment.

These remedies are available in both the Court of Session and the Sheriff Court. The application must be made in the same court in which the action has been (or is being) commenced. The application is made as part of a claim on the merits, either when warrant (or authorization) to serve the claim is applied for or during the progress of the action through the court. Where the application is made and granted before the claim is served then service of the claim will follow immediately and a hearing will be fixed for the respondent to address the court.

Pre-judgment attachments are generally enforced by the creditor serving a copy of the order on the debtor and/or any relevant third party such as the debtor's bank. This has the effect of imposing limitations on what the debtor can do with their funds, property or other valuable assets pending the outcome of the case. Where an interim attachment order is executed wrongfully, the creditor can be held liable in damages to the debtor.

Costs

Costs are called expenses in Scotland. Expenses are awarded at the court's discretion, although the general rule is that they follow success. The unsuccessful party will ordinarily have to pay the successful party's costs.

Expenses recoverable in the Scottish system are determined by reference to a statutory Table of Fees. This allows a block fee to be claimed for each element of the legal work undertaken in the case or the charging of a lawyer's time by reference to a fixed rate.

Generally, the Table of Fees allows the successful party to recover up to 60-65% of their actual costs, although in commercial cases it is often less than that. To compensate for this deficit, enhanced costs can be awarded in complex cases via an additional fee procedure.

The level of court fees depends upon the court in which the action is raised. The Court of Session, as the superior court, incurs higher fees than the Sheriff Court. Fees are generally payable by each party to the action. The fees are set out in Scottish Statutory Instruments (referred to as a Fee Orders). These are regularly updated by Fee Amendment Orders.

Class actions

A Scottish class action procedure, known as 'group procedure', was introduced on 31 July 2020. The procedure is an opt-in procedure and is only available in the Court of Session. It is governed by chapter 26A of the Court Rules. It allows two or more parties to bring joint proceedings if their claims raise issues of either fact or law which are the same as, similar, or related to one another.

Group proceedings are commenced by the preparation and service upon the defender of:

- a Summons (the initiating document setting out the claim);
- a Group Register identifying the claimants; and
- applications to the court for permission to bring group proceedings and for one of the claimants to be the representative party.

Service of the Group Register on the defender stops the clock in terms of time bar. However, certification of the action as a group action and certification of the representative party by the court are required to commence the action at court.

There are no restrictions as to the:

- Type of conduct or cause of action as grounds for group proceedings;
- Type of civil claim which may be brought under group procedure, although to date the procedure has been used to litigate ESG related claims, consumer rights claims and personal injury claims;
- Type of remedies available to claimants, although damages has been the most prevalent remedy sought so far; or
- Nationality or domicile of claimants. The same rules on jurisdiction will be applied as in regular Scottish court proceedings.

However, jury trials and punitive or exemplary damages are not available for group proceedings in Scotland.

Once a group action has been commenced a designated judge will be appointed. He or she will manage the case and have considerable discretion as to the best way of progressing it to a final hearing.

The Rules allow additional members to be added to the Group Register once the action is underway. A revised Group register must be lodged at Court and served on the defender, and notification of the changes given to all existing members, within 21 days.

In terms of settlement the Rules require that the representative party must “consult with” group members on the terms of any proposed settlement. However, in practice there is likely to be a contract in place between group members and the representative party which details how settlement decisions are to be taken.

Appeals can be made against any final order made by the court to the Inner House. The decision whether to appeal a final order or not is likely to be made on a collective basis for the reason outlined in the preceding paragraph.

Finally, the normal rules on costs apply to group proceedings in Scotland. Expenses typically follow success except in personal injury and fatal claims, where qualified one-way cost-shifting applies (the court will not make an award of costs against an unsuccessful claimant unless the litigation has been conducted inappropriately).

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United Arab Emirates

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Overview of court system

The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are financial free zones in the United Arab Emirates (UAE) established pursuant to Federal Laws of the UAE, specifically pursuant to the UAE Constitution and UAE Federal Law No. 8 of 2004 (Financial Free Zone Law).

The Financial Free Zone Law allows for the creation of independent jurisdictions within the UAE in that financial free zones established under the law are exempted from all civil and commercial laws of the UAE. However, they remain subject to the criminal laws of the Emirate in which they are established and the federal criminal laws of the UAE.

In this regard, the DIFC and ADGM (in relation to civil and commercial matters) each have their own legal and regulatory frameworks. The ADGM's legal framework is based on English law. The ADGM regulations adopt selected pieces of English legislation, including matters relating to contract, tort and trusts. By contrast, the DIFC has its own body of laws. DIFC law takes precedence, followed by the law of any jurisdiction other than that of the DIFC expressly chosen by the parties followed by a cascade which ultimately ends with English law. That said, in contractual disputes, the DIFC and ADGM courts should apply the chosen law of the parties.

The DIFC and ADGM each also have their own two-tier court system: the Court of First Instance and the Court of Appeal. Furthermore, the DIFC and ADGM courts have their own rules of court procedure. These procedural rules are broadly based on the English Civil Procedure Rules.

The judges of the DIFC courts are a mix of UAE civil trained judges and judges from various common law jurisdictions including England, Australia and Singapore. The judges of the ADGM courts are from common law jurisdictions only.

The DIFC and ADGM, as jurisdictions, are colloquially referred to as being offshore as opposed to the onshore jurisdictions of each of the seven Emirates of the UAE.

It is worth highlighting that the DIFC and ADGM are young jurisdictions that are continuing to develop on a daily basis. Both jurisdictions were created and operate to provide an alternative forum for dispute resolution in the UAE. In doing so, both the DIFC and ADGM courts have needed to put in place a framework for the interaction of their jurisdiction with the onshore jurisdictions in the Emirates of their establishment and the wider UAE. To this effect, the DIFC and ADGM courts have entered into memoranda of understanding with various courts and jurisdictions, both in the UAE and abroad, which seek to establish processes for the mutual enforcement of judgments and orders.

In this regard, the current legal framework between the DIFC courts and the onshore Dubai courts allows a party to directly enforce a final judgment or order of the DIFC courts onshore in Dubai through the Dubai courts. This has led parties to seek to enforce arbitral awards (both local and foreign) and foreign judgments (including those which have no connection with the DIFC) in the Dubai courts by having them recognized and enforced by the DIFC courts first. This has led to arguments as to whether the DIFC can be used as a conduit jurisdiction for the enforcement of judgments onshore in Dubai in this way.

In addition, a Judicial Committee was formed in Dubai, seemingly as a result of this approach to enforcement. The committee is tasked with resolving conflicts of jurisdiction and judgments between the DIFC and Dubai courts. The committee is formed of three DIFC court judges, three onshore Dubai court judges and is chaired by the head of the Dubai Court of Cassation. The chair has the casting vote in

cases of deadlock.

Limitation

The application of limitation periods is usually an issue of substantive law and therefore the law applicable to the particular contract or interaction of the parties. Advice should be sought on a case-by-case basis on the applicable limitation period and its expiry, as it can critically affect a party's ability to bring a claim.

Assuming that DIFC or ADGM law is the applicable law in respect of limitation periods, the general position is set out below.

Under DIFC law, the position is generally as follows:

- an action for breach of contract must be commenced within six years after the cause of action accrued;
- in respect of claims in negligence, occupiers' liability or misrepresentation, a cause of action arises on the earliest date on which the claimant knows or ought reasonably to know about the loss that gives rise to the cause of action, and an action must be commenced within 15 years of the date that the cause of action in fact arose; and
- where a cause of action arises as a result of fraud by the defendant, there is no time limit before which the action must be commenced.

The ADGM Regulations adopt selected pieces of English legislation, including the English legislation relating to limitation and in particular adopts the Limitation Act 1980 and the Foreign Limitation Periods Act 1984. The position is, generally, as follows:

- an action for breach of contract must be brought within six years of the date of the breach of contract;
- an action for breach of deed must be brought within 12 years of the breach of the obligation in the deed;
- an action in tort/negligence generally, must be brought within six years from the date the damage is suffered;
- an action in negligence, and in respect of latent damage, has to be brought within the later of six years from the date the damage occurred or three years from the date on which the claimant had the requisite knowledge and the right to bring such an action; and
- an action in fraud has to be brought within six years from when the claimant discovered the fraud, or when they could, with reasonable diligence, have discovered it.

Procedural steps and timing

The DIFC and ADGM court rules have generally similar litigation procedures. Subject to the issues in dispute, proceedings will generally go through the following stages:

- Claim: A party files its claim with the court and serves the same on the parties to the proceedings.
- Pleadings: Parties exchange their pleadings which include particularized statements of claim, defense, counterclaims and defense to counterclaims. These pleadings will identify and particularize the issues in dispute.
- Disclosure: This will begin during the pleadings phase and proceed concurrently with the remaining phases.
- Factual witnesses: Parties will exchange any statements of witnesses of fact they wish to rely on and potentially also exchange reply statements.
- Expert witnesses: Parties will exchange any statements of experts they wish to rely on and potentially also exchange reply statements.
- Trial: Parties will finally attend an oral hearing before the court to argue their respective cases. It is also at trial that the witnesses and experts of the parties will be examined and cross-examined on their evidence.

It is difficult to estimate the timeframe of proceedings in the DIFC courts, and the ADGM courts (as at the time of writing) are yet to hear cases that have been through the entirety of the litigation process (including appeals). That said, the relevant factors to be considered include:

- the complexity and number of issues in dispute;
- the availability of the parties, their respective counsel, witnesses and experts; and

- the availability of the judge(s) allocated to the case.

Legal representation in DIFC or ADGM court proceedings is not mandatory. However, in circumstances where a claim falls into a small claims category, legal representation may not be permitted by the relevant court rules.

Each of the DIFC and ADGM court rules have specific rules for when a claim is considered to fall within the jurisdiction of the small claims court or tribunal. These rules are:

- aimed at efficiently dispensing with cases and examples of this include:
  - truncated timetables for service of proceedings and pleadings;
  - no provision for a document production/disclosure process. However, orders for document production could be applied for;
  - expert evidence is not permitted without an order of the court; and
  - the ability of the parties to agree that the dispute be dealt with on the papers.
- are not solely related to value; small claims could include, for example, employment cases where the parties have agreed to refer the matter to a small claims tribunal.

It is also worth noting that each of the DIFC and ADGM rules have unique provisions and processes in respect of small claims. For example, the DIFC rules provide for:

- a conciliatory process identified as a consultation phase where the parties meet before the judge hearing their case with the aim of settling the dispute prior to a hearing on the merits; and
- hearings and consultations to be in private (unless the parties agree otherwise).

Disclosure and discovery

In the DIFC courts, each party is required to submit to the other parties:

- all documents available to it on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's); and
- the documents which it is required to produce by any DIFC court rule.

The default position under the ADGM court rules is similar in that parties must give to all other parties standard disclosure, which includes all the documents on which a party will rely upon at trial, except for documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's). This default position can vary depending on the type of proceedings, the agreement of the parties or direction from the court.

After the initial stages, the parties are then given the opportunity to provide Requests to Produce Documents to their opponent (in the DIFC) or to make an application for specific disclosure to the court (in the ADGM), in which they are required to precisely identify the documents requested and explain (among other things) why they are relevant and material to the outcome of the case (DIFC), or would assist the fair and efficient trial of the proceedings (ADGM).

In circumstances where production of documents is disputed, in both the DIFC and ADGM, applications can be made to the court to rule on whether such production should take place. The court will usually be guided by whether the document in question is relevant to the issues in dispute (and meets other requirements, such as existence and proportionality of the request). The court will then issue orders for production.

The DIFC court rules allow a DIFC court to, at any time, request a party to produce to the court and to the other parties any documents that the court considers to be relevant and material to the outcome of the case on the court's own initiative. A similar rule does not appear in the ADGM court rules. That said, an ADGM court could make such an order based on its general management powers which allows an ADGM court to make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of the ADGM court rules.

In addition, both the DIFC and ADGM court rules allow for disclosure to be ordered against non-parties to proceedings where the court is convinced that:

- the disclosure produced as a result of the order is likely to support the applicant's case, or adversely affect the case of one of the other parties to the proceedings; and
- the disclosure is necessary in order to dispose fairly of the claim.

Default judgment

The DIFC and ADGM court rules allow a claimant to apply to obtain a default judgment where the defendant has missed the time limit to acknowledge the claim against it, or has acknowledged the claim but failed to file a defense.

Once default judgment has been granted, the defendant has no right to appeal the court's decision. However, the defendant may apply to the court to have the judgment set aside or varied. There is no specific guidance provided by the ADGM or DIFC court rules in respect of when an application to set aside or vary a default judgment should be made. However, it is likely that the DIFC and ADGM courts would apply the principles established by the courts of England and Wales. Therefore, any such application should be made promptly. The courts of England and Wales have held promptness (in the context of the applicable provisions of the English CPR) to mean acting with "all reasonable speed in the circumstances."

Appeals

The DIFC and ADGM each have a two-tier court system: the Court of First Instance and the Court of Appeal. The respective court rules of the DIFC and ADGM have broadly similar procedures for the appeal of judgments of the lower court. In each case, before the judgments of the Court of First Instance can be appealed to the Court of Appeal, permission to appeal is required.

Obtaining permission to appeal differs slightly between the DIFC and ADGM courts:

- under the DIFC court rules, where permission to appeal is initially refused on the papers, a party may seek to renew the application at an oral hearing; and
- under the ADGM court rules, all applications for permission to appeal are considered without a hearing. In DIFC court proceedings, an application for permission to appeal may be made to:
  - the Court of First Instance at the hearing where the judgment was made; or
  - that court or the Court of Appeal in a subsequent appeal notice.

If permission is sought by way of an appeal notice, that appeal notice must be filed either within the period directed by the lower court or, if no such direction was provided, within 21 days after the date of the decision of the lower court that the appellant wishes to appeal. If the lower court refuses permission, a further application for permission can be made to the Court of Appeal within 21 days of the lower court's refusal.

In ADGM court proceedings, and similar to DIFC court proceedings, permission must be obtained from a decision of a judge in the Court of First Instance in order to appeal to the Court of Appeal. In order to obtain such permission, an application may be made to the Court of First Instance within 14 days of the date when the decision to be appealed was made. Should the Court of First Instance refuse an application for permission to appeal, a further application for permission to appeal may be made to the Court of Appeal within 28 days from the date of the refusal. All applications for permission to appeal are considered by a panel of three judges without a hearing. The panel may grant or refuse permission to advance all or any of the grounds of appeal or invite the parties to file written submissions within 14 days in relation to the grant of permission. Permission to appeal may only be granted where the panel considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

Interim relief proceedings

Interim relief proceedings are proceedings that relate to a party seeking orders for interim/provisional relief. Such orders are usually granted at an early stage in the proceedings, or before the merits of a dispute are examined. These are distinguished from final remedies which ordinarily form part of the final judgments or orders that dispose of a dispute. There are a wide range of these orders and they usually act to maintain the status quo between the parties. Such orders or remedies can also be stand-alone in their nature; for example, an anti-suit injunction which prevents or restricts a party's ability to commence or continue legal proceedings in a particular forum.

The ability to grant and apply for interim remedies is enshrined in the court laws and procedural rules of each of the DIFC and ADGM. At the date of writing, there have been no reported interim applications or orders in the ADGM courts. The DIFC courts, on the other hand,

have either granted or heard applications for various interim remedies, including:

- freezing orders (including worldwide freezing orders) (for further details, please see 'Prejudgment attachments and freezing orders' below);
- disclosure orders;
- anti-suit injunctions; and
- interim payment orders.

Applications for interim relief are made to the DIFC court and/or ADGM Court of First Instance either on an ex parte basis (i.e. where the respondent is not present at the first hearing) or with notice. In circumstances where the application is made on an ex-parte basis, the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Before entertaining any substantive application for interim relief, the party seeking an interim remedy from either the DIFC or ADGM courts will first need to establish that the relevant court has jurisdiction under its relevant jurisdictional laws. When deciding the substantive application, DIFC court case law illustrates that the approach in deciding the substantive elements of the application generally follows the principles for granting equitable relief in English law. The applicable tests differ depending on the relief sought. However, those elements include:

- whether there is a serious question to be tried;
- whether damages would be an adequate remedy; and
- the balance of convenience between the parties.

Orders for interim relief issued by the DIFC and/or the ADGM court are not appealable, although a party may apply to have the relevant order varied or set aside. The procedure and basis for doing so will depend on the basis on which the particular order was issued.

Given that the DIFC and ADGM are fairly young jurisdictions, it is difficult to accurately estimate the timeframe by which orders for interim relief could be obtained once applied for.

Legal representation for such applications is not mandatory. However, it is strongly recommended that legal advice is sought in respect of any application for interim relief due to the complexity of the legal issues relating to such applications.

Prejudgment attachments and freezing orders

Freezing orders are a category of interim relief that both the DIFC and ADGM courts have the power to grant. It is also worth noting that, in the case of the DIFC courts, there are cases in which freezing orders granted in other jurisdictions have been enforced. These applications are made to the relevant Court of First Instance.

Orders can be made for the freezing of any assets (moveable and immoveable). However, the enforceability of those orders will depend on whether the jurisdiction in which they will be enforced recognizes such orders (or have the power to grant such relief). For example, the DIFC court could make an order to freeze (or otherwise attach) the shares of a limited liability company in onshore Dubai. Whether that attachment will be effective will be subject to: (i) whether the Dubai courts will recognize the DIFC court's order; and (ii) whether such a form of relief is one that is available under the laws of Dubai and the UAE (and therefore one that the Dubai courts can grant).

The DIFC court generally follows English law principles when considering applications for freezing orders. The considerations for such applications include:

- that there is a serious question to be tried;
- that the balance of convenience is in favor of granting such an order;
- that there is a likelihood of injury/damage for which damages would not be an adequate remedy;
- the applicant having an underlying cause of action, in that the applicant must have a substantive claim that may give rise to a judgment that will be enforced against the respondent's (potentially frozen) assets;
- the applicant having a good arguable case;

- the existence of the respondent's assets and such assets being sufficient to meet the applicant's substantive claim; and
- a real risk of dissipation of the respondent's assets.

Furthermore, in *ex parte* applications (i.e. where the respondent is not present at the first hearing), the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Additionally, an applicant obtaining a freezing order from the DIFC courts is generally required to provide a cross-undertaking in damages. This would act to satisfy any damages the respondent incurs where it transpires that the application was wrongfully granted.

The ADGM courts are likely to apply a similar approach.

Both the ADGM and DIFC court rules recognize that applications for interim relief (which include freezing orders), may be made before any substantive proceedings are commenced. In that regard, both court rules provide that the court may give directions requiring a claim to be commenced. Therefore, the issuance of any substantive proceedings will be subject to the discretion of the court.

Costs

The DIFC court rules provide the court with considerable discretion when it comes to making orders as to costs. However, the general rule is that the unsuccessful party will be responsible for settling some part of the successful party's costs, and generally, any court fees that party has incurred. The court must have regard to all the circumstances when making an order as to costs. This includes consideration of the degree of success of the cases of the parties, their conduct during the proceedings and any offers to settle. There is also potential for the DIFC court to make no order as to costs. This is usually where the DIFC court finds that the merits of each party's case are balanced.

The DIFC court will assess the amount of costs due to the successful party on either a standard or indemnity basis. Where costs are assessed on the standard basis, the court will:

- only allow costs which are proportionate to the matters in issue to be recovered; and
- resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favor of the paying party.

On the other hand, where costs are assessed on an indemnity basis, any doubt as to whether costs had been reasonably incurred or are reasonable and proportionate in amount is interpreted in favor of the successful party.

It is also worth noting that the DIFC court is empowered to issue an interim costs order in favor of a party. These costs orders will usually reflect 50% of the costs incurred by the party, or what the court believes is the minimum it will recover.

The ADGM court rules, although somewhat less extensive than the DIFC court rules on costs and their recovery, broadly follow the framework of the DIFC court rules.

Each of the DIFC and ADGM courts have fee schedules relating to court proceedings and applications that are updated on a regular basis. There are a number of fees applicable to a claim including filing fees, application fees and hearing fees.

For substantive claims, and in general, fees are calculated on claim and counterclaim values and expressed as a lump sum plus a percentage.

At the time of writing (December 2023):

- the DIFC court fees for money and/or property claims were:

CLAIM VALUE	FEE
Up to and including USD500,000	5% of the value of the claim and/or the property with a minimum of USD1,500
USD500,000-USD1 million	USD25,000 + 1% over USD500,000
USD1 million-USD5 million	USD30,000 + 0.5% over USD1 million

USD4 million-USD10 million	USD50,000 + 0.4% over USD5 million
USD10 million-USD50 million	USD70,000 + 0.15% over USD10 million
Over USD50 million	USD130,000

- the ADGM court fees for money and/or property claims were:

CLAIM VALUE	FEE
USD100,001-USD500,000	3% of the value of the claim
USD500,000-USD1 million	USD15,000 + 2%
USD1 million-USD 5 million	USD25,000 + 0.6%
USD5,000,001 - USD10 million	USD49,000 + 0.4%
USD10 million	USD69,000 + 0.15% to a maximum of USD99,000
All other claims	USD4,000

Class actions

The DIFC and ADGM courts do not have any laws or procedures for class action proceedings. However, the DIFC and ADGM courts are empowered to make a Group Litigation Order to manage claims which give rise to common or related issues of fact or law. Such an order can also be sought by application.

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United States

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Overview of court system

The analysis below describes the judicial system and practices in the federal courts of the US as well as most state courts. There are numerous deviations from the prevailing approach that vary by state.

The US has a federal system of government that is divided into three branches:

- the legislative branch;
- the executive branch; and
- the judicial branch.

The federal judicial branch is divided into three levels of courts: (i) the U.S. Supreme Court, (ii) 13 U.S. Circuit Courts of Appeals; and (iii) U.S. District Courts. The federal judicial system operates under a common law system.

The U.S. Supreme Court is the highest court in the United States. Few cases originate in the U.S. Supreme Court; the court instead primarily acts as an appellate court for decisions originating in the lower courts. The U.S. Supreme Court has discretion to hear appeals from the Courts of Appeals and typically accepts between 100 and 150 cases per year out of thousands it is asked to review. Nine justices appointed to lifetime terms rule on these cases after receiving written submissions and hearing oral argument.

13 appellate courts, called the U.S. Courts of Appeals, sit below the U.S. Supreme Court. The United States is geographically divided into 94 judicial districts, which in turn are grouped into 12 regional circuits, each of which has its own U.S. Court of Appeals. The U.S. Courts of Appeals generally review the decisions of the U.S. District Courts and federal agencies within their circuits to determine whether the law was correctly applied. In addition to the 12 regional circuits defined geographically, there is one specialized U.S. Court of Appeal—the Federal Circuit Court of Appeals—which has nationwide jurisdiction over certain subject matters, consisting largely of patent and administrative law matters. U.S. Courts of Appeals decisions typically are made by a panel of three judges appointed to lifetime terms.

The United States has 94 federal trial courts, called the U.S. District Courts, corresponding to the 94 judicial districts. There is at least one U.S. District Court in each state. Decisions in the U.S. District Courts are usually made by one of the judges assigned to that district; as with U.S. Supreme Court justices and U.S. Courts of Appeals judges, U.S. District Court judges are appointed to lifetime terms. U.S. District Court judges can rule on both civil and criminal cases, but generally only do so in cases that involve questions of federal law or disputes between citizens of different states. The vast majority of disputes are instead heard by state courts.

Each of the 50 states has its own court system that operates separately from the federal system. Most states have structures similar to the federal courts, with trial courts assigned to particular geographic areas (usually at the county level), one or more intermediate appellate courts, and a state supreme court. In most states, the state supreme court has discretion to hear appeals from the intermediate appellate courts. Delaware is a notable exception; while the state hears many important business disputes, due to its small size has no intermediate appellate court. The state supreme courts are the final arbiters of the laws of their state absent the existence of a federal issue (for example, alleged unconstitutionality of a state statute). Thus, there are certain limited instances when an issue decided by a state supreme court may be elevated to the U.S. Supreme Court. All but one state operates under a common law system. The exception is the state of Louisiana, which is a civil law jurisdiction (primarily derived from the French Napoleonic code with some common law influences).

Notable state variations:

- **Delaware**: No intermediate appellate court exists in Delaware, due to its relatively small size. All appeals are heard by the Delaware Supreme Court as a matter of right.

Limitation

The statute of limitations is a time limit imposed by law during which a party may bring legal action. The limitation period for civil claims varies by jurisdiction and depends on the nature of the claim being brought. These periods typically range from between one and six years but can be longer depending on the applicable state law and the claim at issue. Once the limitations period expires, a court lacks jurisdiction to hear even an otherwise valid claim.

Procedural steps and timing

The litigation process is broadly similar across state and federal courts. Individual litigants may be represented by counsel or can choose to represent themselves (these self-represented individuals are referred to as "*pro se*"). Corporations are generally required to retain an attorney to represent them. In federal court and in most states, proceedings are initiated by a complaint, which is the initial document filed with the U.S. District Court or the state trial court that outlines the factual basis of the lawsuit and the relief the plaintiff seeks. Some states permit a plaintiff to commence a suit by requesting issuance of a summons without filing a complaint, although even in those jurisdictions a complaint must be filed after the summons is issued.

The summons and a copy of the complaint must then be served on the defendant. The period for service varies by jurisdiction but is typically between 30 and 90 days after the complaint was filed. Proof of service must be filed with the court (usually the person who served the document would sign an affidavit) unless the defendant waives such service requirements. Absent a good reason, the court will dismiss the action if the summons is not served on the defendant within the applicable timeframe.

There is generally no requirement in United States courts that a plaintiff provides pre-suit notice or that parties must attempt to resolve their dispute before an action is filed. Defendants have the right to file a motion to dismiss the complaint on various procedural grounds, including lack of personal jurisdiction over the defendant, lack of subject matter jurisdiction by the court, improper service or venue, or failure to state a valid legal claim. Timeframes for filing such motions vary among jurisdictions but are typically between 21 and 60 days.

If no motion to dismiss is filed or if the court denies the motion, the defendant must file an answer to the complaint (typically within 14 to 30 days depending on the jurisdiction). In the answer, the defendants may assert affirmative defenses and counterclaims against the plaintiff, allege cross-claims against another defendant, or join additional parties. Once an answer is filed, parties typically begin the discovery process.

Timeframes for discovery vary greatly depending on the complexity of the case and the case management preferences of the assigned judge and may range from a few months for simple matters to a year or more for complex ones.

Once discovery is completed, any party may file a motion for summary judgment, asking the court to enter judgment in that party's favor based on the undisputed facts of record or a legal question that is dispositive of the case. If no motion for summary judgment is filed or if the court denies the motion, the case is scheduled for trial. Notably, many courts will strongly encourage or order the parties to participate in some form of alternative dispute resolution (for example, mediation) at some point prior to trial.

Cases typically proceed from filing to trial in two to three years, though longer timeframes may be granted for complex matters.

Disclosure and discovery

Civil discovery tools are similar across federal and state courts in the United States. Discovery is broad in scope and designed to allow parties to a lawsuit to obtain virtually all of the information related to any claim or defense in the litigation from each other and third parties. It is not necessary that the requested information be admissible at trial (though there are limited exceptions for certain privileged information, such as communications between a party and its attorney, and requests that are deemed unduly burdensome). As a result, the scope of discovery is significantly broader than the scope of evidence that may ultimately be presented at trial. The court is not typically involved in the discovery process but may be asked to resolve a discovery dispute between the parties.

Discovery typically consists of a combination of the following

- **Initial disclosures**: Parties are usually required to exchange certain fundamental information early in the case without a request from the other side. Such disclosures include a list of key witnesses, relevant documents, damage calculations, and identification of any insurance available to cover any part of a party's liability;
- **Requests for production**: Parties may serve requests for production of another party's documents, records, emails, electronically stored information (referred to as "ESI"), and other data related to the case. This is often a costly process in complex litigation, particularly when there are a large number of electronic documents, in part because the producing party and the requesting party each generally seek to review all of the documents at issue;
- **Requests for inspection**: If particular premises in one party's control are relevant to the case, any other party may request to inspect those premises. For example, such requests might be used to obtain access to a manufacturing plant where an allegedly defective product was manufactured;
- **Interrogatories**: Parties may serve written questions, to which the other party is required to provide written responses verified under oath;
- **Physical and mental examinations**: If a party claims a physical or mental injury as the basis for a claim, other parties may request that the individual submits to examination by an independently retained physician or another medical practitioner;
- **Requests for admission**: Parties may serve requests asking another party to admit certain specified facts contained in the request;
- **Expert reports**: A party may retain an expert witness—a person who has specialized knowledge of a particular field and who can use this expertise to help the judge or jury understand complex issues (for example, the science underlying a medical procedure or the appropriate definition of a product market). If a party retains an expert witness, that witness must prepare a report summarizing the expert's opinions and conclusions, which must be provided to all other parties;
- **Depositions on written questions**: An individual may be placed under oath outside the presence of a judge for the purpose of responding orally to written questions prepared by one of the parties; and
- **Depositions on oral examination**: An individual may be placed under oath outside the presence of a judge for the purpose of responding to questions posed by an adversary's attorney. Most attorneys prefer depositions on oral examination to those on written questions, as the latter do not provide the ability for counsel to ask follow-up questions of a witness and do give a witness time to reflect and revise what might otherwise be more candid testimony. Depositions may be taken of witnesses of fact and, in many jurisdictions, of expert witnesses. Corporate parties can be compelled to produce a designated individual with authority to respond to questions on the corporation's behalf.

Discovery may also be obtained from third parties. However, such discovery is typically limited to production of documents, inspection of premises, and depositions, and to information that cannot be obtained from any of the parties to the litigation.

As noted above, discovery in the United States is often very broad. Nevertheless, any party may seek entry of a protective order to limit the scope of discovery to ensure that it remains proportionate to the complexity and significance of the case, or to preclude discovery that would impose an undue burden on the party or violate some privilege recognized by the law.

Default judgment

A plaintiff can apply for default judgment in proceedings where a defendant does not respond to the plaintiff's complaint within the specified timeframe after the complaint has been served. To do so, the plaintiff typically must submit evidence that it served the complaint. A defendant subject to a default judgment has the option to ask the court to later re-open the case and vacate the judgment, though doing so usually requires the defendant to establish good cause for its failure to respond earlier.

Appeals

In the federal judicial system, U.S. District Courts and federal agencies' administrative courts are typically the first courts to adjudicate disputes. Those courts' final judgments can be appealed once as a matter of right to the appropriate U.S. Court of Appeals by any party unsatisfied with the lower court's decision. Rules of appellate procedure in each jurisdiction set out the requirements and timing for appeals. Appeals must typically be commenced within 30 days following entry of the underlying judgment.

In the federal courts, appeals generally may only be taken from final judgments and not from intermediate decisions made by the lower court. But an immediate right of appeal may be taken from orders granting or denying injunctions, rejecting certain affirmative defenses,

establishing receiverships, or adjudicating rights and liabilities in admiralty proceedings. A party may also be able to petition the U.S. Court of Appeals to hear a pre-judgment appeal if the decision at issue poses a particularly significant and unsettled legal question, though in practice such appeals are rarely allowed.

If a party is unhappy with the decision reached by the U.S. Courts of Appeals, it can seek review by the U.S. Supreme Court, although the U.S. Supreme Court has discretion as to which cases it accepts and only hears a small fraction of the cases it is asked to review each year.

Most states follow a similar three-level structure for their court systems, although some smaller states do not have an intermediate appellate court, with all appeals being taken directly to the state supreme court. The same general prohibition on pre-judgment appeals applies, with each state having its own particular exceptions.

Notable State Variations

- **California**: There is no right of immediate interlocutory appeal; however, a party may petition an appellate court for a writ of mandamus to permit an appeal on a particularly significant issue. This procedure is often used to challenge an order denying a petition to quash a complaint for lack of personal jurisdiction over the defendant;
- **Illinois**: Certain contempt orders are immediately appealable if they impose a monetary fine or other penalty;
- **New York**: New York is significantly more generous in its allowance of interlocutory appeals than other states or the federal system. With few exceptions, interlocutory appeals may be taken from any order that involves some part of the merits of a case or affects a litigant's substantial rights. *Ex parte* orders are not eligible for interlocutory appeal; and
- **Texas**: Orders granting or denying class certification or denying summary judgment based on a finding of immunity are immediately appealable as of right.

Interim relief proceedings

State and federal courts have wide discretion to grant interim relief in the form of injunctive orders. These orders may require a party to do, or refrain from doing, a particular act. Injunctive orders are equitable in nature, and such relief therefore does not typically include an order requiring the payment of money. It is not possible, for instance, to obtain an interim money judgment against a defendant. Interim injunctive orders take one of two forms:

- temporary restraining orders, which are usually reserved for emergency situations, may be issued without notice to other parties or a hearing in as little as a few hours but expire after a limited period of time (usually 14 days); and
- preliminary injunctions, which are typically sought in non-emergency situations, remain in place for the duration of the litigation and require notice and a hearing with the opposing party. Individuals may be represented by an attorney or elect to represent themselves in these proceedings. Corporate parties must typically be represented by an attorney.

Courts are typically reluctant to issue preliminary injunctions, and even more reluctant to issue temporary restraining orders, particularly if the enjoined party has not had an opportunity to present its position. To obtain interim injunctive relief, a party must file a motion accompanied by evidence (for example, affidavits and relevant documents) establishing that the party is entitled to relief. The court may also order a hearing at which testimony on the motion will be presented. Courts generally look at four factors when assessing a party's request for interim injunctive relief:

- whether the requesting party is likely to succeed on the merits of its case;
- whether an award of money damages would not be sufficient to cure the alleged injury;
- whether, on balance, equity favors the issuance of the injunction; and
- whether the public interest favors the injunction.

Courts consider similar factors when assessing requests for permanent injunctive relief, which can be awarded as part of a judgment on the merits. In federal court and in some states, an immediate appeal is permitted from an order granting or denying injunctive relief.

Prejudgment attachments and freezing orders

No common law right to prejudgment attachment exists in the United States. Attachment may be available as a prejudgment remedy

under state statutes addressing the subject. Federal courts may attach property to the extent permitted by the law of the state in which they sit.

A request for a prejudgment attachment or freezing order must be requested from the applicable trial court. A request for attachment or a freezing order may be made at the time the complaint is filed but cannot be requested prior to a suit being commenced. When prejudgment attachment is authorized, courts typically have discretion to issue prejudgment writs of attachment that prevent a defendant from disposing of or hiding tangible or intangible assets that may be used to satisfy any judgment the plaintiff ultimately obtains. A plaintiff seeking prejudgment attachment may be required to post a bond to cover any damage caused to the defendant's property in the event that the plaintiff does not succeed on its claims.

The criteria for the issue of a prejudgment writ of attachment are similar to the ordinary principles for granting injunctive relief, although courts have recognized that attachment is a severe remedy that is appropriate only if the plaintiff produces evidence showing an appreciable risk of being unable to enforce a future judgment. Relief may not be sought without notice to the other parties. Because the procedure seeks to attach assets prior to a judgment being entered, a court is likely to require a high burden of proof showing that the plaintiff will be entitled to relief once the litigation concludes.

Broadly and generally, a request for prejudgment attachment is assessed across four factors, similar to those used when considering requests for injunctive relief:

- whether the applicant is likely to prevail on the merits of its case;
- whether the refusal of a writ of attachment will give rise to a real risk that the plaintiff will be unable to enforce any judgment rendered in its favor;
- whether the balance of the equities favor the attachment; and
- whether the public interest favors the attachment, meaning that attachment must further an important interest beyond the claims in the litigation itself.

Notable State Variations

- **California**: By statute, only property located in California is subject to attachment. Property outside the state may not be attached by a California court;
- **Delaware**: The banking and insurance industries are exempt from prejudgment attachment, both as to deposits held in Delaware as well as any asset owned by an entity that qualifies as a bank; and
- **Illinois**: By statute, Illinois requires that a plaintiff requesting a writ of attachment post a bond equal to double the value of the property to be attached.

Costs

Applicable procedural rules in most state and federal courts provide for costs (not attorneys' fees) to be awarded to the prevailing party following entry of final judgment. Costs eligible for recovery, which usually range from a few hundred to a few thousand dollars, include:

- court filing fees;
- fees for serving process;
- witness fees and transportation expenses;
- transcript preparation fees;
- copying fees; and
- compensation for court-appointed experts and interpreters.

As a general rule, the United States does not have a loser-pays system; instead, each party typically bears its attorney's fees, regardless of whether it prevails in the dispute. There are limited exceptions where attorney's fees and other costs (for example, expert witness fees) are recoverable. For instance, fees may be expressly authorized by the statute under which a particular claim is being litigated, or a contract between the parties may authorize the court to award them.

When fees are authorized, a request for fees is typically made to the judge presiding over the dispute, supported by evidence of the time spent on the matter. The amount of fees awarded varies depending on the claim at issue and the complexity of the case, with the presiding judge having broad discretion to decide what award is reasonable and appropriate. In simple cases, a fee award may be limited to a few thousand dollars. In highly complex litigation, courts have awarded fees ranging into the tens - and in some circumstances involving large, highly complex litigation, hundreds of millions of dollars.

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Class actions

A putative class action proceeding may be commenced by a named plaintiff as a representative of unnamed parties who have the same interest in the proceeding. Any class action in which total exposure exceeds USD5 million may be brought in federal court if the defendant and at least one of the class members are citizens of different states.

The named plaintiff (or class representative) must seek leave of the court to certify the class and proceed as a class action. To obtain class certification, the class representative must produce evidence of a sufficiently numerous class and demonstrate that common legal issues are shared on a class-wide basis, such that resolution of those issues would materially advance all members' claims. Class members are not required to demonstrate identical claims or damages but must show sufficient commonality across the class that individual issues will not make a class proceeding unwieldy. Typically, a motion to certify a class is made following a period of discovery devoted to class issues, such as identification of the class members, common issues, and shared damages theories. An appeal of a class certification decision may be taken if permitted by the appellate court.

As a practical matter, most class actions in the United States are brought with the expectation of settlement. Common claims for class treatment include consumer protection, antitrust, securities actions, mass tort, and civil rights matters, in which individual damages are typically small (perhaps as little as a few dollars) but, in the aggregate, create significant liability exposure. Moreover, while individual class members may recover only small amounts, class counsel may end up recovering a large award of attorney's fees. In any event, class actions typically proceed up until the class certification stage, at which point they are often dismissed or settled.

Once a class is certified, all individuals who satisfy the class definition become members of the class. Those individuals must be notified of their status as class members and given the opportunity to opt out of the class proceedings, or to object to any settlement. All class members who do not opt out will be bound by the judgment of the court or by any approved settlement.

Notable State Variations

- **California**: A denial of class certification is immediately appealable as a matter of right; and
- **Texas**: Orders granting or denying class certification are immediately appealable as a matter of right.

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