

BAHRAIN

# Global litigation guide



## 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](http://www.dlapiper.com).

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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.

## Key contacts



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