

CHILE

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.

Key contacts



Ewald Netten

Partner

DLA Piper Nederland N.V.

ewald.netten@dlapiper.com

T: +31 20 5419 865



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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 probatory. 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.

Key contacts



Mauricio Halpern

Partner

DLA Piper Chile

mhalpern@dlapiper.cl

T: +56-2 2798 2611

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