

GERMANY

# 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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# 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);
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- 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 in business-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 by expanding 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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