

KUWAIT

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.

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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 chooses 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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