

NORWAY

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.

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Norway

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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 (v) 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 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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