

POLAND

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 Polish legal system is codified and part of the civil law tradition. The main statute which governs civil proceedings in Poland is the Civil Procedure Code (CPC), which applies to proceedings before the common courts. As Poland is a member of the EU, EU law is fully implemented in Poland and the courts are required to apply EU regulations directly.

Judicial authority in Poland is exercised by courts (the Supreme Court, common courts and administrative courts) and tribunals (the Constitutional Tribunal and the Tribunal of State). Common courts exercise general jurisdiction in almost all civil and criminal matters and comprise the following:

- district courts (with jurisdiction to hear small cases at first instance);
- regional courts (which hear cases at first instance with a value exceeding PLN100,000 (c. EUR22,500) and appeals from district courts) and some listed categories of cases; and
- appeal courts (which hear appeals from regional courts).

The common courts have civil, criminal, commercial, labor, companies registry and bankruptcy divisions. The Supreme Court is primarily a court of cassation which reviews second instance judgments on an extraordinary basis (i.e. it will only interpret the relevant law and not re-examine the facts of a case).

With the exception of certain judgments of the Supreme Court, judgments do not generally create binding precedents. However, judgments in similar cases, in particular those given by the Supreme Court, may be relied upon by the courts in support of their decisions.

Litigation is possible only in Polish. All documents in foreign languages that constitute evidence should be translated by a sworn translator. Witnesses who do not speak Polish are assisted by a translator.

Limitation

The limitation period starts from the date when the claim arises (or if action is required for the claim to become due, from the earliest possible time when it could have arisen i.e. when certain action could have been taken).

The limitation periods applicable to civil claims are in general:

- six years; or
- three years where the claim relates to periodical performance and/or business activities (i.e. commercial cases).

However, the limitation period ends on the last day of the calendar year (unless the limitation period is less than two years – which it can be in certain cases).

Generally speaking, a creditor or claimant is entitled to pursue their claim even after the relevant limitation period has expired. It is then for the debtor or defendant to raise a limitation defense. If the debtor or defendant does not raise this defense, the court will be entitled to award relief pursuant to the claimant's request.

Procedural steps and timing

A civil claim is commenced by filing a statement of claim with the competent court. The statement of claim must specify the amount in dispute and the relief sought, and include factual particulars of claim and supporting evidence (including documents, witness testimonies and expert opinions, where relevant).

With the exception of proceedings before the Supreme Court, parties are not required to be legally represented. Parties are allowed to appear in person but if they choose to be legally represented, such representation must be by a duly authorized lawyer, an advocate (adwokat) or an attorney-at-law (radca prawny).

The court will consider whether a statement of claim complies with the necessary formalities. If it does, the court will serve it on the defendant. Depending on the court, this stage may take from two weeks up to even two or three months.

A party may file supplementary pleadings with the court. However, all allegations, applications and evidence should be raised in the statement of claim or in the response to a statement of claim. Only in exceptional cases may a party file a subsequent initial pleading. At this stage, a defendant may raise any defense to the claim.

The judge has discretion to decide whether the applications and evidence in the initial proceedings have been raised on time or if they are late. Parties to the dispute are required to present relevant evidence only, so there is no need to present all the documents relating to the underlying facts of the case. A party may request that any person (i.e. the other party or a third party) be ordered by the court to present specific documents in their possession that are relevant to the case. However, there is no regulation about the production of documents before trial.

The timing and duration of the proceedings depend on the court's workload. In more complicated cases which require a number of witnesses and/or expert hearings, judgment is usually delivered by the first instance court between two and five years after the claim is issued.

Disclosure and discovery

Under Polish law, parties are free to determine what evidence they want to rely on. All supporting material relating to the facts of a case constitutes evidence. The court has discretion to assess the credibility and weight of evidence, based on a review of the available material. The parties are obliged to present evidence in order to establish relevant facts to which they apply the law. The court may also admit evidence which has not been presented by a party (e.g. evidence introduced in an expert opinion or the deposition of a witness). In principle, however, the parties have the burden of submitting the evidence upon which they wish to rely.

Fishing expeditions are prohibited. Where a party wishes to obtain a specific document from the other party, it must submit a request to the court identifying the specific document along with the facts and circumstances which it may prove. The court may order the other party to disclose the document if it is satisfied that the document:

- exists (a party may claim that the requested document does not exist);
- is in the other party's possession; and
- evidences a fact which is relevant to the case.

In addition, a court may order any person to produce a specific document which is (i) in their possession and (ii) evidences a fact that is relevant to the case.

The obligation to disclose a specific document may not apply if the document contains privileged or classified information.

If a party fails to produce a specific document which the court has ordered to be produced, the court will not impose a penalty on the non-disclosing party. However, during its assessment of the reliability and validity of evidence, the court will also assess the significance of a party's refusal to present evidence (or a party's interference with the taking of evidence). Unjustified refusal of third parties to provide a requested document(s) can lead to a penalty of up to PLN3,000 (EUR650).

Additionally, the evidence can be secured (during or prior to the start of proceedings), when there is a concern that it will become impractical or difficult to obtain it in the future, or when there is a need to record the existing state of affairs. In urgent cases (or where the adverse party cannot be identified or their residence is unknown), the evidence can be secured *ex parte*.

Default judgment

According to the CPC, the court may issue a default judgment if:

- the defendant does not file a statement of defense within the specified time limit or if - despite failure to file a statement of defense - the case was referred to be heard at a trial but the defendant fails to appear at a trial or appears but takes no active part in the trial; and
- the court has no reasonable doubts about the veracity of the claimant's allegations or described facts and they are not designed to circumvent the law.

The court issues default judgment *ex officio* (it does not have to be requested by the claimant). The court's examination of the merits of the case is very limited – the claimant's statements are deemed to be true unless they raise reasonable doubts.

A defendant, against whom a default judgment has been delivered, may file a statement of opposition within two weeks of the judgment being served. A claimant may also appeal the default judgment if the relief sought in the statement of claim is not granted in full by the court.

Appeals

A losing party may appeal against a judgment of the court of first instance to the court of second instance. The appellant must demand a written justification for the judgment and has two weeks from its receipt to file an appeal (or three weeks in certain circumstances). It is necessary to file the appeal via the first instance court. The respondent has to file a response within two weeks of the delivery of the appeal. In general, the appeal suspends the effects of the appealed judgment. In the second instance, the court rules on the merits and reconsiders the whole case. New evidence may be admitted or rejected by the court if the party could have raised it in the first instance.

There is no specific time limit for the court of first instance to pass on the case files to the court of second instance. The only direction contained in the CPC is that the court of first instance must "promptly" send on the case files to the court of second instance. The duration of proceedings before the court of second instance varies, depending on the court's workload. Second instance proceedings may last, on average, between six months and two years.

The Polish legal system also provides for an extraordinary review of the judgments of second instance courts (i.e. a cassation appeal to the Supreme Court) which must be brought no later than two months after the delivery of the judgment along with a written justification by the second instance court. A cassation appeal will be accepted and processed if:

- the case presents a significant legal issue or an issue that causes discrepancies between court judgments;
- a cassation appeal is manifestly justified; or
- the earlier court proceedings were invalid.

A cassation appeal cannot be based on erroneous interpretations of facts/evaluation of evidence. Strictly, it concerns the legal merits of the case only. The case may be reconsidered partly or completely depending on how the legal issue in question affects the outcome of the case.

The cassation proceedings may take between nine and 12 months before the Supreme Court decides on the merits of the case. However, the timing and duration of the proceedings depend on the court's workload and the complexity of the case. According to the CPC, the Supreme Court is not limited by any deadline in deciding the case.

In cases before the Supreme Court, only an attorney who is admitted to the Polish bar (an advocate or an attorney-at-law) is permitted to write the appeal and represent a party during the hearings.

Interim relief proceedings

Interim relief measures are provisional measures sought in order to secure the claim at an early stage (i.e. measures which will satisfy an eventual judgment) and are referred to in the CPC as security. In monetary cases, security may involve freezing a bank account, establishing a mortgage over real estate or a registered pledge over equipment and machinery, seizing movable property, or even appointing an administrator for an enterprise, all of which would be in force for the duration of the proceedings. In non-monetary cases, the claimant may demand that the court secure the claim temporarily by governing the relationship between the parties or granting other relief tailored to the circumstances.

A claimant may seek security (i) before legal proceedings are commenced; (ii) when they file the statement of claim, or (iii) when the main proceedings are already underway. In general, the application for security will be filed with:

- the court with jurisdiction to hear the main claim when the application is made pre-action;
- the court hearing the claim when the case is already underway; or
- the court where the interim relief will be executed when the application is made after the judgment has been issued.

The court must examine applications for security immediately and not later than a week after they have been filed with the court. An application which is filed with the court before the statement of claim is submitted will be considered without the defendant being notified (i.e. *ex parte*). If the claimant is granted security before the litigation has commenced, the court will indicate a two-week deadline to file the statement of claim with the competent court.

The court will grant the security sought if it finds that the claimant has substantiated:

- its claim (i.e. *prima facie* the claimant has a good claim);
- its legal interest in obtaining security for the claim; and
- that satisfaction of its claim would be hindered if interim relief was not granted.

Legal representation by an attorney is not mandatory in security proceedings. The court fee for a security application is 1/4 of 5% of the value of the case, capped at PLN50,000 (EUR11,200) if it is filed before the judicial proceedings. When a security application is filed together with the statement of claim, there is no separate court fee for the application. The court fee for a security application filed in the course of the proceedings amounts to PLN100 (EUR22,50).

A defendant against whom security has been granted, may file an appeal within seven days of receipt of the judgment. An appeal does not suspend the effects of the judgment.

If the court does not grant relief, the claimant may also challenge the court's decision and file an appeal within seven days from the delivery of the judgment.

Prejudgment attachments and freezing orders

Security may be sought in any civil case heard by a court or an arbitration tribunal. The court may grant security prior to the start, or during the course, of the proceedings. In principle, the court which is competent to hear a case at first instance is also competent to grant security.

Security may be sought by any party to (or participant in) the proceedings if the party/participant can substantiate its claim and legal interest (by demonstrating *prima facie* that its claim is legitimate and has a legal basis) in having the security or injunction granted. A legal interest in having the security or injunction granted exists where the absence of security or injunction would prevent, or significantly hinder, the enforcement of a judgment issued in the case, or would otherwise prevent or significantly hinder the objective of the proceedings being achieved. Except as otherwise provided by law, no security may be sought to satisfy a claim.

Pecuniary claims can be secured through:

- attachment of movable property, remuneration for work, bank account receivables, other receivables or other property rights;
- encumbrance of the debtor's immovable property with a compulsory mortgage;
- injunction prohibiting the transfer or encumbrance of immovable property which has no land and mortgage register or whose land and mortgage register has been lost or destroyed;
- encumbrance of a ship or a ship under construction with a maritime mortgage;

- injunction prohibiting the sale of a cooperative title to premises; or
- receivership established over an enterprise, agricultural farm or plant constituting part of the enterprise (in whole or in part).

With respect to claims other than monetary claims, the court shall grant such an injunction as it considers appropriate in the circumstances, not excluding a form of security or injunction relevant to monetary claims. In particular, the court may:

- regulate the rights and obligations of the parties to or participants in proceedings or pending proceedings;
- prohibit the disposal of assets or rights involved in the proceedings;
- stay enforcement or other proceedings aimed at enforcing a decision;
- decide on the custody of minors and contact with a child; or
- order that a relevant warning notice be recorded in a land and mortgage register or another relevant register.

In principle, the court should grant the methods of securing the claims preferred by the claimant.

The process takes place *ex parte*, i.e. except as otherwise provided by a specific regulation, an order granting security issued in the judge's chambers, and enforceable by an enforcement authority, is only served on the creditor. Service on the debtor is effected by the enforcement authority after the order has been made. In the case of an order granting security, the creditor's appeal or the decision of the court of second instance regarding the appeal will not be served on the debtor when the decision is enforceable by an enforcement authority.

A prejudgment attachment must always be followed by a claim on the merits. If the court grants security before proceedings are commenced, the court will set a deadline for filing the statement of claim of two weeks from the order granting security. Security will be lifted if (i) the statement of claim is not filed by the deadline set by the court; or (ii) the creditor (a) does not pursue the entire secured claim; or (b) pursues a claim other than that which was secured.

Equally, if (i) the creditor fails to file a statement of claim by the prescribed deadline or withdraws a statement of claim; (ii) a statement of claim is returned or rejected; (iii) an action is dismissed; (iv) proceedings are discontinued; or (v) the creditor does not pursue the entire claim or pursues a claim other than that which was secured, the debtor may claim damages against the creditor for losses caused by the enforcement of security. The claim for damages has a one-year limitation period from the date when the statement of claim is returned or rejected, an action is dismissed or proceedings are discontinued. If an appeal is filed with the Supreme Court, the one-year time limit will start running on the day when proceedings are concluded with a judgment or decision that cannot be appealed.

Costs

The costs of legal proceedings in Poland are generally low. The general rule in commercial cases is that when a case is filed, the claimant has to pay the court fees. The court fees are 5% of the value of the dispute, but court fees are capped at PLN200,000 (around EUR45,000). The same court fees apply to appeal and cassation proceedings. In principle, the unsuccessful party pays the costs of the legal proceedings (court fees, attorneys' fees, and other expenses such as experts' fees). However, the amount granted by the judge for attorneys' fees must be within the limit prescribed by law and may not exceed six times the minimum rate (see below). The reasons for an increased rate may include:

- the case is complicated;
- the attorney's workload was heavy; or
- the value of the litigation.

In practice, courts often award the minimum rate. For instance, if the value of a dispute is between PLN2,000,000 (EUR450,000) and PLN5,000,000 (EUR1,125,000), the minimum rate is PLN15,000 (EUR3,400) and the maximum rate is PLN90,000 (EUR20,400), and if the value of the dispute is above PLN5,000,000 (EUR1,125,000), the minimum rate is PLN25,000 (EUR5,600), and the maximum rate is PLN150,000 (EUR33,600). Experts' fees are also subject to regulation and are very low (usually between EUR1,000 and EUR7,000). The question of costs is decided in the last phase of judicial proceedings at the time of the judgment. The courts ask parties for advance payments on expert fees.

Class actions

Class actions (or group proceedings) are only permissible in the following areas: consumer protection, product liability, liability for the non-performance or improper performance of a contractual obligation, unjust enrichment, and tort cases where the claims arise from the same or a similar set of facts. Regional courts are competent to hear class actions in first instance. The conditions which must be met in order for a class action (group proceedings) to be admitted are as follows:

- the claims arise from the same or a similar set of facts;
- the claimants are claiming the same amount as other members in a certain group or sub-group;
- there are at least ten claimants; and
- the claimants are represented by counsel.

The role of the representative (who holds the sole mandate to institute class action proceedings) can be performed by a member of the group or a local consumer ombudsman. All members of the group must approve the person who will act as the representative. Members of a group in class action proceedings must directly express their wish to participate in the proceedings by submitting a declaration when joining the group (before the proceedings are instituted or during the second stage, while the group is being formed). A binding judgment is effective upon all members of the group and can only be appealed collectively by the group's representative. However, those who have not joined the group, or who have left the group (the possibility of leaving the group is limited by certain time frames), can individually pursue their claims.

The timing and duration of the proceedings depends on the case complexity and number of claimants. Usually, class action proceedings are more lengthy than standard proceedings and last between 4 – 10 years.

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