# Table of contents

About .................................................................................................................. 3
Australia ................................................................. 4
Austria ........................................................................... 9
Bahrain ....................................................................... 16
Belgium ....................................................................... 21
Brazil ........................................................................... 26
Canada ..................................................................... 34
Chile ......................................................................... 41
China ......................................................................... 46
Finland ...................................................................... 52
France ....................................................................... 56
Germany ..................................................................... 60
Hong Kong, SAR ...................................................... 64
Hungary ..................................................................... 69
Italy .......................................................................... 75
Japan ......................................................................... 81
Kuwait ....................................................................... 85
Mexico ...................................................................... 89
Netherlands .................................................................. 93
New Zealand ........................................................... 97
Norway ..................................................................... 102
Poland ....................................................................... 107
Qatar ......................................................................... 113
Romania .................................................................... 118
Russia ....................................................................... 122
Saudi Arabia ................................................................ 127
Spain ......................................................................... 131
Sweden ..................................................................... 136
Thailand ..................................................................... 140
UK - England & Wales ............................................. 144
UK - Scotland .......................................................... 150
United Arab Emirates ................................................ 154
United States ........................................................... 161
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
Australia

Overview of court system

Australia's courts operate under the common law legal system. Australia has a federal system of government, with legislative power divided between the federal branch of government and six state and two territory governments (for ease, we refer collectively to the states and territories as the state or states). Australia's courts are similarly divided into eight separate state jurisdictions and a federal jurisdiction, which each operate on a parallel but independent hierarchy of courts. State and federal courts broadly have jurisdiction over the application of legislation enacted by the state and federal parliaments respectively. The High Court of Australia is the ultimate court of appeal in Australia for all court systems. There are also tribunals created by specific legislation under state and federal jurisdictions.

Limitation

In each state or territory of Australia, specific legislation imposes a time period before the end of which proceedings must be commenced for a claim or dispute.

The specific legislation is:

- Limitation Act 1985 (ACT)
- Limitation Act 1981 (NT)
- Limitation Act 1969 (NSW)
- Limitation of Actions Act 1974 (QLD)
- Limitation of Actions Act 1936 (SA)
- Limitation Act 1974 (TAS)
- Limitation of Actions Act 1958 (VIC)
- Limitation Act 2005 (WA)

These time periods vary from state to state and depend upon the type of claim. A failure to issue proceedings before the relevant time period expires is likely to result in that claim becoming time barred.

In most Australian states, actions in simple contract or tort must be brought within six years of either the date of breach (contract) or the date on which loss was incurred (tort).

The limitation period may be extended in some circumstances, for example where someone with legal incapacity (such as a minor or a person of unsound mind) has entered into a contract. Some jurisdictions also permit for the limitation period to be extended at the court's discretion.

Procedural steps and timing
The process of litigation is broadly similar across Australian courts. Proceedings are initiated by a claim or application, which must be filed in the relevant court and served on all parties to the proceeding. Parties will then exchange pleadings (such as statements of claim, defenses, counterclaims, and replies) which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party. Timeframes for the progression of litigation are found in the civil procedure rules applicable in each jurisdiction. Generally, a defense must be filed within 28 days of service of a statement of claim.

For proceedings in the Federal Court, parties are required to file a genuine steps statement, which outlines the steps taken to make a sincere and genuine attempt to resolve the dispute prior to commencing litigation. Superior courts in the states may also require a party to litigation to provide details of attempts made to resolve a dispute before proceedings were commenced.

Once the exchange of pleadings is complete, parties will generally undertake the discovery (also known as the disclosure) process, and then go on to prepare their evidence for a final hearing of the dispute. It is common, particularly in complex litigation, for the parties to be obliged to attend court at regular intervals for directions hearings, in which orders are given to manage the conduct and timeframes of the case up until its final hearing.

Timeframes for each stage of proceedings vary greatly with the complexity and case management style of an individual matter and the specific jurisdiction in which the case is commenced. Each superior court in the states has in place specific practice notes or directions for the conduct of commercial disputes with the aim of ensuring that those commercial disputes are resolved in the most cost-effective and time-efficient manner possible. Generally, across all jurisdictions, parties will have 28 days from receipt of a claim to put on a defense. As noted above, the timetable from that point of time will depend on the nature of the dispute.

A straightforward commercial contract dispute will normally, court resources permitting, be resolved within 12 months.

Most state and federal courts require a corporate entity to be represented by a lawyer (which could include a lawyer employed by a company). Some jurisdictions dealing with small claims / employment issues may allow a company to appear by its director. Individuals may appear on their own behalf in most jurisdictions without a lawyer.

**Disclosure and discovery**

In Australia, the discovery process is designed to allow parties to civil litigation to obtain from an opponent all documents relevant to the issues in dispute. Australian courts strictly prohibit "fishing expeditions" through discovery. Discovery is usually undertaken after the close of pleadings (although in some courts in some states this may not be permitted until after evidence is complete) when the points of dispute between the parties have crystallized. Discovery may however be ordered, in limited circumstances, prior to the commencement of proceedings where an applicant is able to satisfy the court that he or she needs to obtain discovery in order to find out whether or not a cause of action exists against a potential defendant.

The practice of disclosure varies between those jurisdictions which mandate a general right of discovery and those in which the right is more limited. In the Northern Territory and the states of South Australia and Queensland, parties have a mandatory duty of disclosure which is discharged by the exchange of lists or copies of discoverable documents. In Tasmania, Victoria and Western Australia, a party may, by written notice to another party, require that party to make general discovery. In the Federal Court of Australia and New South Wales, the right to discovery is limited and requires an order of the court and will usually be limited to specific categories.

There have been recent attempts by some of the states' superior courts to more tightly control the disclosure process. For example, the preparation of disclosure plans (which identify the categories of documents to be disclosed and how they will be disclosed), and the courts ordering that discovery being provided after the exchange of written evidence with a view to limiting the number of documents to be exchanged.

In the Federal Court and most state courts, discovery can be ordered to be made by non-parties to the dispute where the court is satisfied as to the likelihood of the non-party having relevant documents. Courts in Australia will also generally permit the issuing of subpoenas to produce documents to non-parties to litigation and this process will be more straightforward than seeking non-party disclosure orders.

**Default judgment**

Default judgment can be applied for in proceedings in any court where a defendant does not:

* file a defense within the specified timeframe after a statement of claim has been served; or
* fails to make an appearance at a hearing.
Once a default judgment is ordered against a defendant, a defendant can, in limited circumstances, seek to challenge the granting of judgment by default. The defendant will need to file an application or motion to set aside the default judgment within a specified period of time and show cause for why (usually lack of notice of the claim or that notice was given of intent to defend but that notice was not brought to the attention of the court which granted the default judgment) the judgment should be set aside.

**Appeals**

Judgments of civil courts in Australia can be appealed to a superior court. Civil procedure legislation in each jurisdiction sets out the rules and procedure for appeals. Ordinarily, it will be necessary to seek leave from the superior court to appeal. The Court of Appeal in each state, and the Full Federal Court, are the ultimate courts of appeal for each of those jurisdictions. Cases that emanate from the Federal Circuit Court are appealable to the Federal Court and then the Full Federal Court, whereas matters emanating from a State Magistrates Court are appealable to the Supreme Court and the Court of Appeal. Decisions made by the District Court (County Court in certain states) are appealable to the Supreme Court and decisions of the Supreme Court can be appealed to the state’s Court of Appeal. The High Court of Australia hears appeals from courts of appeal (sometimes referred to as the full court) in all jurisdictions, and has limited original jurisdiction (which predominantly relates to constitutional matters).

Parties generally, depending on the jurisdiction, have 28 days from the date of judgment or final order, to lodge an appeal in a civil matter to the relevant appeal court. Appeals will generally, because of the limitation of introducing new evidence in most civil appeals, be resolved more quickly than matters at first instance. Most appeals of civil matters will be heard and judgment given within six to eight months from commencement of the appeal.

**Interim relief proceedings**

All superior Australian courts have a wide power and discretion to grant both interlocutory orders and interlocutory injunctions. An interlocutory application, generally speaking, is an application which seeks any order other than a final judgment.

As in other jurisdictions, interlocutory injunctions are a species of interlocutory orders. Where those orders are sought on an urgent and temporary basis until a more extended form of relief is sought, they are often referred to as interim orders.

Interlocutory orders (including interlocutory injunctions) can require a party to undertake or refrain from a particular act, and can be granted before proceedings have commenced, once they are on foot and after judgment has been entered. Applications for these types of orders may be made by self-represented litigants or through legal representation.

The categories of non-urgent interlocutory orders that an applicant may seek are many and varied and include, by way of example, applications for security for costs, discovery (including preliminary discovery before proceedings have been commenced), the filing of expert evidence or orders for particulars. The evidence required to obtain non-urgent interlocutory orders will turn on the type of orders sought, although at the very least substantive interlocutory applications usually require a sworn affidavit to be filed.

The kinds of relief that can be sought by way of an urgent interlocutory injunction are equally varied. This is because the orders have the purpose of preserving the status quo until the rights of the parties can be determined finally, and the types of matters that can be heard by the court are vast. Common urgent interlocutory injunctions include applications for the preservation of property, the freezing of assets and applications to search premises to preserve evidence.

An applicant for an interlocutory injunction (either urgent or not) must prove that:

- there is a serious question of law to be tried;
- the balance of convenience favors the granting of the injunction; and
- an award of damages (at the conclusion of the proceeding) would not be an adequate remedy.

It is possible for urgent interlocutory injunction applications to be heard by the court ex parte, without the opposing party’s involvement. Any orders given ex parte will generally operate only for a limited period of time until the matter can be brought to a hearing. The duration of any ex parte order will ordinarily be limited to a period terminating on the return date of the summons, which should be as early as practicable (usually not more than a day or two) after the order was made, when the respondent will have the opportunity to be heard.

For this reason appeals of ex parte interlocutory injunctions are not usually made to a superior court. The applicant will then bear the onus
of satisfying the court that the order should be continued or renewed. A party seeking an interlocutory injunction will ordinarily be obliged to give an undertaking to pay any damages by the defendant suffered as a result of the injunction in the event that the claim for final relief at trial fails.

The decision to grant an interlocutory injunction can be appealed on an urgent basis to a relevant appeal court. The appeal court will usually list the matter before a single judge to assess the urgency (often the same or the day following the day on which the appeal is lodged) and set a timetable based on the information provided at that first listing.

**Prejudgment attachments and freezing orders**

Australian state and federal courts can grant interim freezing orders, which restrain a defendant from disposing of property prior to judgment. These orders are a species of interlocutory orders. Such applications may be filed at the Supreme Court or Federal Court. A freezing order is normally obtained *ex parte* without notice to the respondent, before service of the originating process, because notice or service may prompt the feared dissipation or dealing with assets. A freezing order or an ancillary order may be limited to assets in Australia or in a defined part of Australia, or may extend to assets anywhere in the world, and may cover all assets without limitation, assets of a particular class, or specific assets. It would therefore be possible for a freezing order to encompass bank accounts as well as assets such as real property, art, securities or motor vehicles. Such orders would, however, normally allow for access to funds for reasonable expenses, living costs and payments in the ordinary course of a defendant or third party's business. A court may also order a freezing order against a third party, where it can be established that there is a risk that a judgment or prospective judgment may be unsatisfied as a result of a third party's power, possession or influence over the assets in question. The power to issue a freezing order is a function of courts' authority to prevent an abuse of the court process by the frustration of court-ordered remedies. A freezing order will be made only to preserve the status quo for the purpose of resolving a substantive cause of action brought by the plaintiff, and not as a stand-alone remedy.

The criteria for the issue of a freezing order is similar to the ordinary principles for the grant of interim relief, as discussed above, although the potentially serious impact on a defendant's property rights raises the threshold for the granting of a freezing order. This may be overcome by an undertaking as to damages given by the applicant of the freezing order, where the applicant undertakes to submit to such order (if any) as the court may consider to be just for the payment of compensation (to be assessed by the court or as it may direct) to any person affected by the operation of the order. The High Court of Australia described freezing orders as 'a drastic remedy which should not be granted lightly.' Broadly and generally, an applicant must show that:

- the applicant has a good arguable case (in the substantive cause of action);
- the refusal of a freezing order will give rise to a real risk that any judgment pronounced in the action will remain unsatisfied, or that the recovery of any judgment will be prejudiced by reason of the removal by the defendant of assets from the jurisdiction, or their dissipation within it; and
- the balance of convenience favors the making of the order.

**Costs**

Australian courts have wide discretion to award costs orders against either party to cover the opposing party's costs of litigation. The general rule is that costs follow the event. This means that the unsuccessful party will be liable to pay the litigation costs of the successful party. The aim of this rule is to achieve a just outcome by shifting the costs burden on to the party which is found to have either unjustifiably brought another party before the court or given another party cause to have recourse to the court to obtain their rights.

Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect the litigants' relative success and failure. Courts may depart from the general rule by requiring a successful party to bear their own costs where there is good cause to do so. Such an outcome may be justified where, for example, a successful plaintiff is awarded only nominal damages, or a party succeeds only due to late and substantial amendments to their case.

Of particular strategic importance is the rule that generally a court will not award costs to a successful party which has obtained relief no more favorable than had already been offered by his or her opponent in settlement discussions. This rule is designed to encourage the early resolution of litigated disputes.

Costs orders are subject to a costs assessment process administered by the courts. It is unusual that a party will be able to recover all of its actual legal costs through this process. On a standard assessment, parties may recover approximately 60% to 75% of their actual costs. A higher rate of assessment, on an indemnity basis, may be employed where a party has engaged in unreasonable conduct in the
proceeding.

All courts in Australia will charge fees for commencing civil proceedings (often referred to as a filing fee). Some jurisdictions, particularly superior courts, will also charge additional fees including but not limited to daily hearing fees (calculated by reference to the length of the trial), filing fees for notices of motions/applications and the issuing of subpoenas to third parties. These fees are set by the courts and are published on their websites. They are usually reviewed on a yearly basis. By way of example, the current (2019) rate for commencing proceedings in the Federal Court of Australia is AUD4,045 for corporations and the hearing fee for a five-day trial is AUD19,730 for corporations.

Class actions

In all Australian jurisdictions, a representative proceeding, or class action (as it is more commonly known in Australia) may be commenced by or against any one person as a representative of numerous persons (the minimum number required is generally seven people) who have the same interest in the proceeding and the claims brought give rise to a substantial common issue of law or fact. It is possible to commence a class action against multiple defendants and there is no requirement for every group member to have a claim against every defendant.

An overarching consideration of the courts in hearing a representative proceeding is whether it involves less delay, expense, and prejudice to the parties than alternative forms of trial. If not, the court may discontinue the proceedings.

The Federal, New South Wales, Victorian and, most recently, Queensland jurisdictions contain further statutory provisions in relation to representative proceedings, which are arguably more liberal and plaintiff-friendly than other jurisdictions. These jurisdictions allow representative proceedings to be brought where seven or more people have claims which arise out of the same or related circumstances and give rise to a substantial common issue of fact or law. Over 90% of all class actions filed in Australia from 1992-2009 were filed in the Federal Court of Australia.

When a representative proceeding is commenced, all potential plaintiffs who fall within a class become members of the class, whether they are aware of the claim or not. Members can then opt out of the proceedings before a date set by the court. All class members who do not opt out will be bound by the judgment of the court or by any approved settlement.

It is important to note that, although some states have yet to formally abolish the law of champerty and maintenance, outside of the US, Australia has one of the most developed class action industries, with a variety of large, class action plaintiff law firms and with many litigation funders having been active in the jurisdiction for over 20 years. This active funding industry has seen a continued increase in the number of class actions being commenced in Australia.

Key contacts

Cameron Maclean
Partner
DLA Piper Australia
cameron.maclean@dlapiper.com
T: +61 8 6467 6013
Austria

Overview of court system

Austrian courts operate under the civil law system. This means that to a great extent substantive and procedural laws are codified. The Austrian court system is based on various low-level courts, including 115 District Courts (Bezirksgerichte) as well as 20 Regional Courts (Landesgerichte). The District Courts and Regional Courts are courts of first instance, the jurisdiction of which depend on the amount and the subject matter in dispute. Second instance courts can be either Regional Courts, (referred to above) or one of the four Higher Regional Courts (Oberlandesgerichte). For civil proceedings, the final court of appeal is the Supreme Court in Vienna (Oberster Gerichtshof).

Specialized courts are established to deal with matters relating to commercial law, antitrust law, labor and social law. These special courts are either divisions within the above-mentioned courts or are self-standing special courts, such as the Labour and Social Court (Arbeits- und Sozialgericht) in Vienna.

Limitation

In general, under Austrian law, limitation periods begin to run on the day on which the claimant could first have asserted their right in court. In terms of duration, Austrian law distinguishes between long and short limitation periods. Long limitation periods of 30 years normally apply whereas short limitation periods of 3 years constitute exceptions.

With regards to time limits (for instance limitation periods or preclusion periods), Austrian law draws a distinction between time limits applicable in respect of substantive and procedural law matters respectively. The rules for the calculation of time limits in respect of substantive law matters are laid down in the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch). They apply, inter alia, to time limits that result from unilateral legal acts, as well as to statutory time limits such as limitation periods or preclusion periods. However, there are also specific limitation periods which displace the general ones under the Austrian Civil Code, e.g. within the framework of capital market law, the limitation period for bringing a claim is ten years after completion of the offer which is subject to prospectus requirements.

Procedural steps and timing

Civil proceedings are generally initiated by a statement of claim (Klage) which must be filed with the competent court via an electronic filing system (WebERV). In certain circumstances, claimants must be represented by an attorney. This is the case in: (i) first instance proceedings at the Regional Court level; (ii) District Court proceedings involving an amount in dispute exceeding EUR5,000; and (iii) appeal proceedings. After the statement of claim is filed, the court will examine its jurisdiction in the relevant case. If the court considers the claim admissible, it will serve the statement of claim on the defendant and order it to file a written statement of defense within four weeks. The written statement of defense defines the scope of the subject matter and the specific issues in dispute. A written statement of defense is, however, not required in proceedings of first instance before a District Court.

Once the exchange of pleadings is complete, the court usually summons the parties to a preliminary hearing (Vorbereitende Tagsatzung) within the next few weeks or months. In this preliminary oral hearing, the parties discuss the facts of the case and try to reach a settlement. The court may issue a judgment and close the proceedings after the preliminary hearing. However, usually there are subsequent evidential hearings, the number of which depends on the scope and complexity of the case. The dates for these further oral hearings are usually agreed between the parties and the judge at the preliminary hearing.
The claimant is allowed to withdraw its claim without a waiver of claims before the defendant submits its statement of defense. Once the statement of defense has been filed, the claim may only be withdrawn with the consent of the defendant(s). However, if the claimant is willing to waive its claims, it may seek to discontinue the proceedings at any time before the trial or oral hearings are closed. The main consequence of such a discontinuance would be that the claimant must pay all costs already incurred in the proceedings.

Monetary claims not exceeding EUR75,000 must be pursued in the form of a so-called default action (Mahnverfahren). If the claim meets the necessary conditions, the court will issue a conditional order for payment (Zahlungsbefehl) without hearing the defendant. The defendant then has the right to submit an objection within four weeks, otherwise the conditional order for payment will become legally binding. If the objection is raised within the specified timeframe, the payment order will become invalid and ordinary civil proceedings will be initiated.

Timeframes for each stage of proceedings vary considerably depending on the complexity of the case as well as the court and the parties' availability. The court will exercise its case management powers to determine the procedure and timetable for the proceedings. The average duration of civil proceedings is around 6 months in the District Courts and 13 months in the Regional Courts.

The parties can, at any stage, agree to suspend (or stay) the proceedings by jointly notifying the court of an agreed suspension. The reasons for an agreed suspension can vary. For instance, parties may choose to stay proceedings in order to facilitate settlement negotiations or because a settlement has been reached. Save in the event of an agreed settlement, the proceedings can be resumed (i.e. the stay lifted) upon request of one party after a minimum three-month suspension.

**Disclosure and discovery**

The Austrian Code of Civil Procedure (Zivilprozessordnung) explicitly lists the following five types of evidence:

- documentary evidence;
- witness testimony;
- expert evidence;
- inspections; and
- the hearing of the parties.

Each party must offer all evidence necessary to substantiate the statements included in its respective pleadings. Documentary evidence is normally adduced to the court by the submission of the document and a reference made to it in the party's written or oral argument. The Austrian Code of Civil Procedure is based on the legal institute of the free evaluation of evidence (Freie Beweiswürdigung), which means that Austrian courts enjoy wide discretion with regards to the assessment of the evidence. The court may not, however, admit evidence which it considers irrelevant to the matters in dispute or which appears to have been submitted with the intention of delaying the proceedings.

A party may request the court to order disclosure of a certain document, which is in the possession of the opponent, so that the document becomes available in the proceedings. Thus, a party wishing to adduce a certain document as evidence in legal proceedings may request the court orders its opponent to present that document to the court. The requesting party must state the contents of the requested document as precisely and completely as possible, and must also indicate all facts and matters which are to be proven by the document. The requesting party also must prove that the document is in the possession of the opposing party.

If the court orders disclosure, the obligation to present the document is definite and cannot be avoided by the opposing party. The party opposing disclosure may, however, refuse to present the document by invoking one of the grounds for refusal listed in Section 305 of the Austrian Code of Civil Procedure, e.g. if the content concerns matters of family life, if the disclosure of the document would be disgraceful to the party or third parties or would involve the risk of criminal prosecution, etc. The refusal to present a document can also be justified in specific circumstances, such as in the case of commercially sensitive information, which can be claimed by the party opposing disclosure.

On the other hand, Section 304 of the Austrian Code of Civil Procedure lists certain grounds which, if present, are determinative in favor of disclosure, e.g. if the party opposing disclosure has referred to the document in the proceedings, committed itself under civil law to the delivery or presentation of the document, or if the document concerned is a joint document.

In accordance with the jurisprudence of the Austrian courts, no discovery/disclosure process exists. Furthermore, even evidence obtained through illegal means is, in principle, admissible in the proceedings save where it was obtained in violation of constitutionally guaranteed
fundamental rights.

**Default judgment**

In the event that the defendant does not appear at the first oral hearing or does not file its statement of defense on time, the claimant can request a default judgment. In such a case, the remedies sought by the claimant will be granted unless the court considers them to be clearly unfounded. The defendant can appeal within 14 days after it has been notified of the judgment.

**Appeals**

Unless a dispute is settled, proceedings usually end with a judgment (Urteil). Judgments are final decisions on the subject matter of the dispute and deal with material legal issues raised in the parties’ written statements and in the oral hearings. The written judgment will be distributed to the parties. Generally, parties will have four weeks after notification of the judgment to file an appeal against it. If the judgment is handed down in writing, the time limit for raising the appeal is four weeks calculated from the day following the handing down. If, however, the judgment is issued orally at the end of the hearing and in the presence of both parties, the party wishing to file an appeal must enter a notice of appeal either:

- orally immediately after the judgment is pronounced; or
- in writing within two weeks calculated from the day following service of the transcript of the minutes of the hearing.

Usually, judgments are handed down in writing.

The jurisdiction of the appellate court depends on whether the appeal was made against a decision of a District Court or a Regional Court. First instance judgments given by the District Courts can be appealed to the Regional Courts, whereas first instance judgments given by the Regional Courts must be appealed to one of the four Higher Regional Courts.

The second instance court decides whether a second appeal to the Supreme Court is permitted. A second appeal to the Supreme Court usually requires there to be a legal question of considerable importance to ensure legal unity, security and development as well as an amount in dispute of more than EUR5,000. If the court declines the second appeal, there is still an opportunity to file an extraordinary second appeal to the Supreme Court. An extraordinary second appeal requires an amount in dispute of more than EUR30,000 or the dispute to be of a particular nature such as family law disputes or labor and social law disputes. Second appeals against judgments must be filed within four weeks from the date of the decision on the appeal. Appeals are typically resolved within four to six months after the appeal of the first instance judgment is filed. Supreme Court decisions might take up to one year.

There are also ordinary appeals against resolutions of a court (Beschlüsse), which are not judgments. Resolutions typically concern the conduct of the proceeding and procedural issues. The appeal has to be brought against resolutions of the competent court of first or second instance within 14 days of the relevant resolution. Some appeals against special resolutions of the court can also be made within four weeks of the relevant special resolution.

**Interim relief proceedings**

Austrian law essentially provides three categories of interim (or temporary) relief measures:

- preventive measures, which are granted to secure the enforceability of an eventual judgment and may involve freezing a particular state of affairs or assets;
- regulatory measures, which are granted to regulate a temporary state of affairs; and
- performance measures, which provide a temporary performance of an alleged obligation.

However, this categorization is of little practical importance. Despite specific provisions in certain pieces of legislation (such as such as the Patent Act, the Copyright Act or the Trademark Act), interim relief measures are mainly regulated by the Enforcement Act (Exekutionsordnung), which distinguishes between:

- interim injunctions; and
- execution for security.
Execution for security refers to the execution of an interim measure on the condition that the applicant pays security into court covering any potential damages to the defendant. In order to grant execution for security:

- the court needs to have issued an existing judgment, which will be the basis for execution;
- the claim must be a monetary claim; and
- the court must be convinced that:
  - without the execution for security, the enforcement of the monetary claim would be thwarted or considerably impeded; or
  - the judgment would most likely need to be enforced in states or another foreign jurisdiction in which the enforcement of the claim is not guaranteed either by international treaties or by Union law.

This section focuses on interim injunctions, which are types of preventive measures granted to ensure immediate legal protection before, during or after a trial. There are three types of interim relief injunctions:

- for the purpose of securing monetary claims;
- for the purpose of securing other claims; and
- for the purpose of securing a right or a legal relationship.

For further detail on interim injunctions, see [Prejudgment attachments and freezing orders](#).

Injunctive relief proceedings commence when one of the parties applies for injunctive relief at:

- the court where the substantive proceedings are pending; or
- the District Court of the domicile (Allgemeiner Gerichtsstand) of the defendant when an injunctive measure is sought prior to the commencement of substantive proceedings.

The application will usually be accompanied by supporting evidence (evidence may be merely cited in the application but parties generally enclose it to avoid the delay in having to provide it subsequently). In specialized legal matters (family law disputes, labor and social law disputes, etc.), interim proceedings may also be initiated and granted *ex officio*.

For injunctive relief to be granted, the claimant must demonstrate that:

- it has a *prima facie* claim, and for this purpose the applicant will need to (i) include precise allegations regarding its claim in the application; or (ii) refer to such precise allegations in the main lawsuit when the application and the lawsuit are filed at the same time; and
- its claim risks being frustrated if no injunctive relief is granted by the court.

If the court considers that (i) the above requirements (along with other formalities) are satisfied; and (ii) granting injunctive relief would (a) respect the principle of proportionality; and (b) not result in an irreversible state of affairs, the court will order injunctive relief sought by the applicant. Further, the court may order that injunctive relief may be made conditional on the applicant's payment of security into court.

The procedure for issuing injunctive relief is not public and, in principle (unless the claim relates to civil rights), will be conducted without hearing the opposing party. However, as the opposing party has the right to object to the court's decision once the injunction has been granted, the courts usually serve the application on the opposing party in order to avoid a subsequent opposition (provided that notice will not to lead to a delay likely to defeat the purpose of the injunction). If notice has been given, the opposing party may reply to the application within a short deadline set by the court (usually ranging between three days to two weeks).

Generally, injunctive relief is granted within one week of the application, although in case of urgent matters the court can grant interim relief within two or three days.

The defendant can appeal against decisions of the court within 14 days after the service of the order granting the interim measure.

The costs of interim relief proceedings have to be advanced by the claimant. However, the claimant may be reimbursed of such costs by the opposing party if the claimant is successful in the main proceedings.

In certain circumstances, usually when the amount in dispute exceeds EUR5,000, legal representation is mandatory. If represented by an attorney, the application for injunctive relief has to be submitted to the court in written form. Otherwise, the application may be made
A orally and a transcript will be taken.

**Prejudgment attachments and freezing orders**

Austrian courts may grant interim relief measures equivalent to prejudgment attachments and freezing orders.

**Preventive injunctions**

As noted in *Interim relief proceedings*, Austrian courts may grant a series of preventive measures granted to secure the enforceability of an eventual judgment and may involve freezing a particular state of affairs or assets.

Like other interim injunctions, they can be sought prior to the initiation of, during the proceedings or after trial. The competent court to hear the application is the court where the substantive proceedings are pending, or when such a measure is sought pre-action, the competent court is the District Court of the *domicile (Allgemeiner Gerichtsstand)* of the defendant.

In addition to the requirements for injunctive relief specified in *Interim relief proceedings*, preventive interim injunctions for monetary and non-monetary claims may be granted when:

- It is probable that without the requested measure the defendant would impede or considerably impede the enforcement of a claim (e.g. by damaging, destroying or relocating assets); or
- The defendant has no assets in Austria, and enforcement is not guaranteed by European or international law.

In addition, for monetary claims, the applicant will need to prove:

- its entitlement to the claim; and
- its interest in the disposal of the claim.

Parties may request the following preventive injunctions:

- in respect of monetary claims:
  - the deposit or administration of movable goods by the court;
  - the prohibition on the disposal or pledging of movable assets;
  - the prohibition on third parties from providing payments to a person;
  - the administration of a property; and
  - the prohibition on the disposal and pledging of property or certain rights arising from a registration in the Land Register; and
- in respect of a non-monetary claim, there is no exhaustive list of measures. Accordingly, the court may order all the above as well as orders requiring (i) the applicant to retain custody of the respondent's property/asset, or (ii) the respondent to take action to preserve the property/asset or prohibit him from taking actions that may adversely affect such property/asset.

In the majority of cases, decisions on applications for preventive injunctions occur in ex parte proceedings (i.e. without notice to the respondent).

The application for a preventive injunction must contain:

- the names of the parties concerned;
- the facts establishing the court's jurisdiction;
- the legal basis as to why the injunction is requested;
- the legal interest of the party seeking the injunction;
- the form of the requested interim relief; and
- the desired duration.

There is no specific timeframe in which the substantive claim should be brought. The preventive injunction is granted by the court for a
certain period of time. After the expiry of this period, the preventive injunction ceases to apply. The creditor can be held liable for any damage suffered by the debtor if the court subsequently finds that the relevant preventive injunction was unjustified.

**Preventive taking of evidence**

In addition, orders attaching the defendant's assets or orders freezing bank accounts may also be granted following an application for the preliminary taking of evidence. These are types of interim injunctions seeking to prevent the loss of or difficulties regarding the use of evidence or if the availability of the evidence is uncertain.

In the application, the applicant shall identify:

- the opponent;
- the facts on which the taking of evidence is to be based;
- the evidence the applicant is seeking to be secured;
- the witnesses to be heard and any experts proposed; and
- the reasons for the application.

The application is usually filed with the court hearing the main proceedings. However, in urgent cases and if a legal dispute has not yet commenced, the application will need to be filed with the District Court where the object to be attached is located. In case of a freezing order, the local jurisdiction shall be determined by reference to the seat of the credit institution that hold the assets to be frozen.

**Costs**

The Austrian civil procedure law provides a system of cost reimbursement. The unsuccessful party is required to reimburse the costs of the prevailing party; however, this is limited to costs that are necessarily incurred. The procedural costs are divided into court fees, legal fees (e.g. fees of legal representation) and party expenses.

Court fees are subject to the Court Fees Act (Gerichtsgebührengesetz) and calculated on a graduated scale in accordance with the amount in dispute. Moreover, the costs also depend on the court where the proceedings are pending. In cases involving amounts in dispute exceeding EUR350,000, court fees for first instance proceedings are 1.2% of the amount in dispute. A separate calculation on court fees applies to appeal proceedings but this is also based on the amount in dispute. In a wider sense, court fees also comprise the fees and expenses of witnesses, court appointed experts and court interpreters.

The unsuccessful party is obliged to reimburse the court costs, but only to the degree prescribed in the Attorneys' Fees Act (Rechtsanwaltsstarifgesetz). The expenses of the parties are mostly travel expenses and loss of earnings as a consequence of their attendance in court. As an exception to the principle that the unsuccessful party is to pay the procedural costs, the court can, under certain circumstances, also oblige one party to bear the costs of the entire proceedings or of a certain phase of the proceedings regardless of its outcome.

**Class actions**

In Austria, a class action (Sammelklage) can either be commenced by an association that promotes the interest of a group of persons suffering damages, such as consumers or employees, or by several claimants having the same interest in the proceedings. The same interest does not need to arise out of the same action or transaction, but requires a shared interest in the determination of some question of law or fact. In contrast to the class action system in the US, Austrian claimants must take positive steps to get involved in a class action. The entitled parties assign their claims to an association or another legal person, which asserts the individual claims in a comprehensive claim.

**Key contacts**
Claudine Vartian
Partner
DLA Piper Weiss-Tessbach
Rechtsanwälte GmbH
claudine.vartian@dlapiper.com
T: +43 1 531 781410
Overview of court system

The Kingdom of Bahrain operates under a civil law system with Civil Courts and Shari'a Courts. As such, there is no system of binding judicial precedent. All proceedings are conducted in Arabic and all non-Arabic documents submitted in proceedings must be translated.

The Civil Courts are authorized to settle all commercial and civil cases, as well as all cases involving disputes related to personal status (i.e. issues related to marriage, child custody, alimony and inheritance) of non-Muslims. These courts have a four-tier system:

- the Court of Minor Causes and Court of Execution;
- the High Court;
- the High Court of Appeal; and
- the Court of Cassation.

The Court of Cassation is the highest civil judicial authority in Bahrain.

It is common for these courts to appoint experts to assist them in relation to a variety of areas, such as finance, accounting, engineering and other technical matters.

The Shari'a Courts hear all issues in relation to the personal status of Muslims of all nationalities. These courts have a four-tier system:

- the Lower Shari'a Court;
- the Higher Shari'a Court;
- the High Shari'a Court of Appeal; and
- the Court of Cassation.

The Shari'a Courts are further divided into two sections: for Sunni Muslims and for Shia Muslims.

In addition to the Civil Courts and Shari'a Courts, there is a Constitutional Court which acts as an independent judicial authority solely tasked with reviewing and ensuring that no enacted laws contradict the Constitution of Bahrain. The Constitutional Court also addresses the question of constitutionality of legal provisions which arise in any existing case and which are referred to it for determination.

Bahrain's courts have broad jurisdiction over legal disputes. For example, jurisdiction can be based on a party having its domicile or place of business in Bahrain.

Limitation

The general limitation period for bringing civil claims in Bahrain is 15 years from the date on which the unlawful act was committed. However, exceptions exist for certain types of claims relating to insurance, construction, and employment, which each have a limitation period of three years, three years and one year respectively from the date on which the unlawful act was committed.
Procedural steps and timing

Proceedings are conducted in Arabic and any documents submitted to the courts must be translated into Arabic by a locally licensed translator.

The process of litigation is broadly similar across the Bahrain courts. Proceedings are commenced when a claimant submits an application to the competent court in the form of a statement of claim to the Case Registration Department. A hearing will then be scheduled with the claimant (usually within one week). On the day following the first hearing attended by the claimant, the competent court will send the defendant a summons along with a copy of the statement of claim. In the summons, the defendant will be directed to file a defense memorandum at least three days before the date of the upcoming hearing.

Typically, the timeframe between the date of the summons being sent to the defendant and the parties' first appearance in court is 8 days for matters before the Court of Minor Causes and 15 days for matters before the High Court or the High Court of Appeal.

Where urgent proceedings have been requested, the Court for Urgent Matters (a court that sits at the same level as Court of Minor Causes and its jurisdiction is limited to contingent claims relating to civil matters) will usually give a 24-hour notice period for attendance unless the court believes that the matter is of such urgency that a shorter timeframe is merited.

Timeframes for each stage of the proceedings will vary depending on the complexity of the case and whether the court has appointed an expert. Furthermore, there are no formal deadlines by which cases must proceed.

With the above in mind, cases before:

- the Court of Minor Causes and Court of Execution will take approximately three to six months from commencement up to judgment;
- the High Court will take approximately three to six months from commencement up to judgment;
- the High Court of Appeal will take approximately two to four months from commencement up to judgment;
- the Court of Cassation (in respect of civil matters) will take approximately 12 months from commencement up to judgment;
- the Lower Shari'a Court will take approximately three to six months from commencement up to judgment;
- the Higher Shari'a Court will take approximately three to six months from commencement up to judgment;
- the High Shari'a Court of Appeal will take approximately three to six months from commencement up to judgment; and
- the Court of Cassation (in respect of Shari'a matters) will take approximately 18 months from commencement up to judgment.

The timeframes provided above assume that:

- the issues in dispute are limited to legal and factual issues;
- the court has not appointed an expert; and
- notification of the proceedings does not become protracted.

Litigants are not required to be represented by an attorney before any of the courts. At each hearing (before any of the courts), the parties themselves and/or their authorized representatives can appear.

Disclosure and discovery

There is no principle of disclosure in Bahrain similar to common law jurisdictions. Parties substantiate their claims using the evidence on which they wish to rely. If a party makes a non-specific request for discovery of documents or information, the request will not be accepted by the court. Further, the court may, at its own discretion, order a party to submit any additional evidence it deems relevant.

However, it is possible for a party to request the court to order, or the court on its own power may order, the opposing party to disclose documents that are defined in a specific request. The party requesting the disclosure must demonstrate that it has a legitimate interest in the documents for the purpose of the case. The submission of documents can only be requested once legal proceedings have commenced. However, in practice, orders for disclosure are rare.
Default judgment

Bahrain courts allow for a default judgment to be entered into where a defendant is properly summoned but fails to appear before the competent court without valid reason. The law does not provide guidance on what constitutes a valid reason in such circumstances and therefore is determined on a case by case basis.

Despite entering a default judgment, the court will analyze the merits of the claim to reach a judgment.

In circumstances where a party was absent when a judgment was given, and the party seeks to appeal that judgment, the timeframe for an appeal will commence on the date the party was personally notified of the judgment by the clerk of the competent court at their place of residence, or a chosen domicile by registered mail.

Appeals

In general, the judgments of lower courts can be appealed as of right to a superior court. The timeframe and grounds for such appeals are found in the Civil and Commercial Procedures Law.

The general timeframe to file an appeal at each court level is 45 days from the date of the issued judgment that is being appealed, unless otherwise provided by law. Subject to a small number of exceptions, the timeframe for filing an appeal commences when the unsuccessful party has been notified of the judgment.

If the competent court issues its judgment at a hearing where all parties were present, the timeframe for an appeal begins to run on the date of that hearing.

A party loses its right to appeal if it fails to appeal a judgment within the permitted timeframe. Timeframes for appeal stages vary depending on the complexity of the case and whether the court has appointed an expert. There are no formal deadlines by which cases must proceed.

With the above in mind, cases before:

- the High Court will take approximately three to six months from commencement up to judgment;
- the High Court of Appeal will take approximately two to four months from commencement up to judgment;
- the Court of Cassation (in respect of civil matters) will take approximately 12 months from commencement up to judgment;
- the Higher Shari'a Court will take approximately three to six months from commencement up to judgment;
- the High Shari'a Court of Appeal will take approximately three to six months from commencement up to judgment; and
- the Court of Cassation (in respect of Shari'a matters) will take approximately 18 months from commencement up to judgment.

The timeframes provided above assume that:

- the issues in dispute are limited to legal and factual issues;
- the court has not appointed an expert; and
- notification of the proceedings does not become protracted.

Interim relief proceedings

A number of interim relief measures are available upon application to the competent courts. These include attachment of assets (for more details see Prejudgment attachments and freezing orders) and travel bans on individuals leaving Bahrain.

Interim relief measures can be applied before, during and after judgment has been rendered (pending its execution). The law does not set out timeframes for applying for interim relief, nor does it set out the deadlines for the competent courts to issue rulings on such applications.

Bahraini law states that the claimant must submit an application to the competent court in order to obtain interim relief. The law does not further elaborate the procedure to obtain interim relief nor the criteria that an applicant must satisfy to obtain interim relief. Generally,
where there is risk that the claimant's rights may be hindered, the claimant may submit an application to obtain interim relief before the Court of Urgent Matters to expedite the measures.

Bahraini law does not specify a timeframe for granting interim relief. That said, in practice the approximate timeframe between the commencement of the interim proceedings up to judgment would be three months.

Litigants are not required to be represented by an attorney before the court. At each hearing (before any of the courts), the parties themselves and/or their authorized representatives can appear before the court.

Any petition to appeal against an order for interim relief must be heard within eight days of such appeal.

**Prejudgment attachments and freezing orders**

Prejudgment attachments and freezing orders are types of interim relief in Bahrain. Any party may seek a prejudgment attachment by seeking an order from the Court of Execution, to obtain and maintain an attachment over the opposing party's assets.

Such applications can either be made during the course of proceedings or prior to substantive proceedings being commenced. Where such applications are made prior to substantive proceedings being commenced, they are usually made on an *ex-parte* basis.

Almost all assets (whether moveable or immovable) may be attached. Assets that cannot be attached include:

- the home which is the dwelling of the party's family;
- furniture and books (i.e. records) necessary for the party to carry on his profession;
- salaries of staff and employees; and
- public property or property owned by the state.

In order for an attachment application to be successful, the claimant must persuade the court that there are valid reasons for the issuance of such an order. The reasons for which a court will order an attachment are not exhaustive but include:

- there being a risk that the defendant will dissipate its assets; and/or
- there being a risk that the defendant has acted (or will act) in a way that will hinder or delay the enforcement of a judgment.

In circumstances where an attachment is applied for and granted prior to the issuance of substantive proceedings, the law requires substantive proceedings to be filed within eight days of the attachment being effected. Should this not occur, the attachment would be lifted and treated as void.

An attachment order may be appealed to the competent court within eight days from the date when the party concerned is notified of the attachment order. As the attachment would be approved by a court order, a creditor would not be held liable for any damages caused by the attachment to the debtor, even if the attachment had been wrongly granted.

**Costs**

The costs of litigation in Bahrain can be divided into translation fees (if any), court fees (which include court appointed expert fees) and lawyers' fees.

Court fees are deemed to include:

- claim registration fees. When submitting a statement of claim to the competent court, the party must pay a court fee of approximately 2.5% of the claim amount to the clerk of the court; and
- expert fees, which will be subject to the court's discretion and vary on a case-by-case basis.

Legal and other fees (such as translation fees) are not included in court fees.

The competent court has the authority to award costs, including lawyers' fees, to be paid by the unsuccessful party. The Bahrain courts usually order the losing party to bear the court fees; legal and other fees are determined based at the sole discretion of the court. In practice, where any fees (other than court fees) are awarded, they are minimal and do not reflect the actual legal (or other) costs incurred.
by a party. Generally, the fees that are awarded in this regard are less than USD600.

If both parties are unsuccessful in their claims, the competent court has the discretion to rule that either:

- each party will bear the costs that they have incurred; or
- the total costs will be divided between the two parties; or
- one of the parties will bear the total costs.

Class actions

In Bahrain, class action proceedings may be permitted, provided the parties all have the same cause of action. In addition, any person may intervene and join ongoing litigation if that person has an interest that is relevant or related to the case. The intervention can be made either in accordance with the regular procedures for filing a claim before the hearing, or by an oral request to the court during the hearing. Furthermore, the court has the discretion to judge the merits of the intervention and may reject the intervention if it is deemed to be fit and necessary. In practice, the decision regarding whether to carry forward such a case as a single action lies with the competent court. Usually the court chooses to conduct independent trials for each applicant.

Key contacts

Henry Quinlan
Partner, Head of Litigation and Regulatory, Middle East
DLA Piper Middle East LLP
henry.quinlan@dlapiper.com
T: +971 4 438 6350
Overview of court system

Belgium is a civil law jurisdiction and civil proceedings are regulated by the Belgian Code on Judicial Proceedings (the Code). The Code was enacted on October 10, 1967 and has, since then, been subject to various amendments. Precedents do not, in principle, bind the courts but they are nonetheless used as a source of authority.

The Belgian civil court system is organized into three levels. At the highest level is the Supreme Court (Cour de cassation/Hof van Cassatie). Below it are five Courts of Appeal (Cour d'appel/Hof van beroep), dealing with all civil, commercial and criminal cases, and also the specialized Labour Court of Appeal (Cour du travail/Arbeidshof) dealing with labor law matters. Below the Courts of Appeal are the District Courts for each of the 12 districts. The District Courts are composed of the Tribunal of First Instance (Tribunal de première instance/rechtbank van eerste aanleg), the Labour Law Court (Tribunal du travail/Arbeidsrechtbank) and the Commercial Court (Tribunal du commerce/rechtbank van koophandel). In addition to these, Belgium also has a specialized administrative court (Conseil d'Etat/Raad van Staat) and a constitutional court (Cour Constitutionnelle/Grondwettelijk Hof).

Belgium also has 187 Justices of the Peace (juge de paix/vrederechter), which are small claim courts that deal with matters with a value of less than EUR2,500. These small claim courts also have jurisdiction over specific matters (e.g. civil and commercial leases).

Limitation

In principle, all contractual claims are subject to a ten-year limitation period beginning on the date on which the rights under the contract could have been exercised. For tort claims, this term is reduced to five years after the claimant has learned of either the damage or its aggravation and the person liable.

Belgian law has a great variety of statutory limitation periods which can have different starting points. As indicated above, for claims based on breaches of contract the start of the limitation term does not have to coincide with knowledge of the existence of the claim, whereas for torts it does.

Procedural steps and timing

Representation by an attorney in civil proceedings is not mandatory. Civil proceedings are typically commenced by a writ of summons being served on the adverse party. The writ of summons is, at the same time, registered with the court. Within a few weeks of service of the writ of summons on the defendant, parties to simple or undisputed cases will be heard at an introductory hearing and not be required to submit written pleadings to the court. The judge will usually render a judgment on the matter shortly after the introductory hearing.

If the case is complex or disputed, the merits of the claim will not be heard at an introductory hearing. Instead, the parties to this type of case will seek to agree the dates for the exchange of written pleadings and also the date for the main hearing. In practice, the parties usually agree how long the main hearing should be, they contact the court to ascertain the court's first available date for the main hearing and then they decide the schedule for the exchange of written pleadings by reference to the date for the main hearing. Should an
agreement not be reached, the court will decide on these matters. On average, parties usually file one to three sets of written pleadings each. The length of time required to exchange pleadings is determined by the parties and varies from case to case, depending on the complexity of the case and the court’s availability.

Following the exchange of written pleadings, the case will be pleaded orally at the main hearing. Oral pleadings are important to explain the position of the parties to the court and to focus on specific issues. In practice, an oral pleading allows the parties to emphasize what they deem to be important. At this hearing, the judge may raise an issue referred to in the written pleadings which they feel is relevant for the final judgment. A hearing offers those present the opportunity to respond to this and, if needed, to request the opportunity to submit additional written pleadings. While the oral hearing is important for these reasons, the court will only take into consideration the arguments listed in the written pleadings. In principle, the court will render the judgment one month following the date of the oral hearing. This may, however, be postponed if the case is important or complex.

The timeframe for proceedings depends on the court with jurisdiction and its location. Before the Tribunal of First Instance, the average duration for a straightforward case is one to two years, although it is common to have longer timeframes for complex cases.

The language of the proceedings is subject to strict regulation. In civil, commercial and labor law matters, proceedings are conducted mainly in French or Dutch depending on the territorial location of the court. In criminal cases, the language of the defendant is the main consideration when determining the language of the proceedings. Whilst most cases are heard in French or Dutch, proceedings in courts located in the German-speaking areas of Belgium will be heard in German.

**Disclosure and discovery**

For civil proceedings in Belgium, there is no formal discovery or disclosure process. Each party bears, in principle, the burden of proving its allegations and will attach to its written pleadings the list of documents on which it relies. Copies of such documents shall be provided to the other party and, shortly before the hearing, each party provides a bundle with all the evidence upon which it relies to the court.

Each party also has a duty of good faith which implies a certain degree of cooperation in the production of evidence. A party who has reason to believe its opponent possesses a document that is relevant to the court's decision may solicit the production of said document by its opponent, if needed, with the intervention of the court.

Where there are strong indications that a third party has in its custody a document establishing a relevant fact, the court may order that this document, or a copy thereof, be sent to the other party and filed with the court.

There is no opposition or appeal against a judgment ordering a party or third party to produce a document. Where a party fails to comply with the judgment without a legitimate reason, the court may order the party or third party to pay damages. Altering or destroying evidence that is ordered by a court to be produced is a criminal offence under Belgian law (art. 495 bis Criminal Code).

The court has authority to take measures aimed at ensuring that evidence is properly gathered and preserved. For this purpose, the court may order the appointment of an expert, or the production of a witness statement or any other kind of document. Such measures can be taken following a party’s request, or at the court’s own initiative.

**Default judgment**

If the claimant does not appear in court at the introductory hearing, the judge can simply deny their claim. However, if the defendant does not appear at the introductory hearing, the judge is obliged to thoroughly analyze the merits of the claim before granting the judgment. The judge will, in these circumstances, analyze issues of liability and quantum and may, for example, reduce the quantum where the amount specified in the claim is unreasonable. The judge may not, however, analyze issues relating to the territorial jurisdiction of the court or the procedure to commence the claim.

Furthermore, a default judgment cannot be rendered against a party that submits a written pleading, even if it does not appear in person before the court. Once a party files its written pleading, the judge is obliged to address the issues raised in the pleading in its judgment.

The defendant may object to and/or appeal a default judgment on points of fact and law. An objection (i.e. an opposition which may result in the judge that issued the default judgment reconsidering its decision) will suspend the execution of the default judgment, except when a default judgment expressly orders the claimant to execute it. Conversely, an appeal does not suspend the execution of the default judgment. Recent reforms looking to reduce the workload of Belgium's courts have limited the instances in which a default judgment can be objected to. This is now limited to claims that do not exceed the thresholds for appeal, namely EUR1,800 for the Justice of the Peace and EUR2,500 for the Tribunal of First Instance and the Court of Commerce. Cases: (i) where the quantum in dispute exceeds these
thresholds; (ii) that cannot be quantified; or (iii) that pertain to the termination of contracts, cannot be objected to and may only be appealed. The timeframe to appeal a default judgment is one month from the service of the judgment.

**Appeals**

A judgment from a District Court can be appealed to the Court of Appeal within a month of its service on the appellant party. The Court of Appeal will review the facts of the case and the questions of law. A judgment from a Court of Appeal can be appealed to the Supreme Court but the Supreme Court will only review questions of law and cannot be regarded as a third instance. The timeframe for lodging an appeal to the Supreme Court is three months after the service of the relevant Court of Appeal judgment on the appellant party.

If a party chooses to appeal a judgment it has to address the particular grievances it has with the first judgment. Only the parts of the first decision which are appealed shall be subject to a new decision. The defendant in an appeal might choose to appeal parts of a decision which aggrieved him or her, and can do so in written pleadings.

Appeal proceedings can last a number of years depending on the court's workload. By way of illustration, some appeal proceedings before the Brussels Court of Appeal have lasted more than five years. The Supreme Court usually takes around a year and a half to decide on a case.

**Interim relief proceedings**

The court is empowered to grant interim measures to protect the interests of the parties before the commencement and during the course of the proceedings. Such measures include ordering one party to do something or to refrain from doing something.

The court may grant interim relief if the applicant:

- proves that its interests will be severely and irreparably harmed in the near future if the interim relief measure is not granted;
- proves that the granting of the measure is urgent and cannot wait to the conclusion of the proceedings; and
- has a claim that is *prima facie* valid.

Typical interim relief measures in Belgium include:

- an order requiring a party to pay a certain amount to the other to protect the interests of the latter during the course of the proceedings;
- an order forbidding a party from terminating a contract;
- an order suspending construction works;
- the removal of a certain article from all magazines containing it; and
- the termination of an attachment.

Interim relief proceedings usually last a minimum of eight days from the date of the application until the date of the order. However, in cases of urgency, interim relief can be obtained in a couple of days.

Both the applicant and the respondent may respectively appeal an order refusing and/or granting an interim relief measure. If the interim relief: (i) is refused, the applicant can appeal the decision within a month of the date of the order refusing relief; and (ii) is granted; the respondent can appeal the decision at any time until the measure is revoked or becomes final at the trial.

Legal representation is not mandatory in interim relief proceedings.

**Prejudgment attachments and freezing orders**

Prejudgment attachments and freezing orders are types of interim relief measures, and therefore the principles in *Interim relief proceedings* also apply to these measures.

Pre-action interim remedies can be requested from the president of the competent court in summary proceedings (action en référé/kortging), such proceedings being particularly brief. The president of the court has broad jurisdiction to grant prejudgment
attachments and freezing orders provided that the matter is urgent and that the measure is necessary to avoid imminent and unjustified damage. In principle, the president of the court will hear from both parties before deciding whether to grant a prejudgment attachment or a freezing order. In the case of absolute urgency, such measures may be requested in *ex parte* proceedings, i.e. without the defendant being notified. When deciding whether to grant the requested prejudgment attachment or freezing order, the president of the court will not decide on the merits of the case.

If prejudgment attachments or freezing orders are granted before the main action has been commenced, they are usually followed by the commencement of proceedings on the merits of the case. Belgian procedural law does not specify a term within which a party must commence proceedings after an attachment or a freezing order has been granted. Instead, the judge granting the order usually sets a term during which such prejudgement attachment or freezing order will be valid but in any event they will lapse after three years.

Although prejudgement attachments are often followed by proceedings on the merits, this is not always the case. It is possible, for example, that the parties may settle the dispute outside of court or that the proceedings are no longer required because a debtor has paid its debt. Such circumstances would render the commencement of the proceedings otiose.

Like other interim measures, prejudgment and freezing attachments can also be requested from the court hearing the main claim once the proceedings have started.

Before granting an attachment or freezing order, the court will need to be satisfied that:

- the creditor has a *prima facie* claim against the debtor;
- there is a risk that the debtor will alienate its assets to the detriment of its creditor. This condition may also be met in the event that there is a real risk that the debtor will become insolvent by the time the creditor wishes to seize the debtor's assets; and
- there is an urgency to protect the debtor's assets to prevent their alienation or dissipation to the detriment of the creditor.

A hearing will usually be required for the parties to argue their positions in respect of the above requirements. The hearing on an application for a prejudgment attachment or freezing order will take place at least eight days after the application for relief.

If the fulfillment of the requirements above are later disproven, the attachment will cease to apply and the creditor will be held liable for any damages caused to the debtor by the attachment/freezing order/seizure.

Should the court grant the requested attachment/freezing order, the debtor can appeal the court's decision.

In principle, all assets can be attached but there are a number of exceptions pertaining to the capacity of the debtor or their financial situation. The creditor can choose the assets he wishes to attach but may be held liable if he or she makes this choice in an abusive manner.

**Costs**

The costs of civil proceedings are, in principle, small and consist of the costs for registering the writ of summons with court, which is EUR1,200 at most, and the costs of the bailiff for serving the writ of summons. The main expenses in proceedings are the lawyers' fees and disbursements.

The general principle is that the courts will order the unsuccessful party to:

- indemnify the successful party for its costs; and
- provide an indemnity for its own lawyers' costs.

The indemnity for the lawyers' costs is fixed and capped by statute in accordance with a scale set by a royal decree. In many cases, this scale results in the indemnity being less than the actual fees of the lawyer as the highest amount that can be indemnified against is EUR36,000.

It should be noted that, when a judgment is rendered in Belgium, it has to be registered with the public administration and, at that stage, registration duties become payable. The registration fee is 3% of the principal amount a party is ordered to pay to its counterparty under a judgment (cfr. art. 142 of the Code on Registration Duties). The public administration normally claims these registration duties from the party who has been ordered to pay.
Class actions

Class actions do exist under Belgian procedural law. Class representatives have to be recognized by the Belgian authorities before they can represent a class of claimants. At the time of writing, only one consumer organization is recognized as a class representative, which means that only this organization can commence class action proceedings.

Key contacts

Annelies Verlinden
Partner
DLA Piper UK LLP
annelies.verlinden@dlapiper.com
T: +32 2 500 15 43
Brazil

Last modified 19 July 2019

Overview of court system

Brazil is a civil law country where codified laws take precedence over judicial decisions. However, over the last 60 years or so, Brazil has instituted several procedures that give greater weight than previously to the normative element of judicial decisions. The main reason for giving judicial decisions such importance is the overwhelming case load in courts and the need to make them more efficient. As a result, the term precedent and even the concept of *stare decisis* (i.e. determining points in litigation according to precedent), have started to appear more frequently in Brazil, in both scholars' opinions and legislated changes enacted in recent years.

Leaving aside special courts covering areas such as state military, military electoral and labor (which fall outside the scope of this report), the Brazilian civil justice system is structured into two different judicial branches:

- federal courts; and
- the courts organized by each state (state courts).

The jurisdiction of the federal and state courts does not overlap. The jurisdiction of the federal courts will depend on:

- the matter under dispute (*ratione materiae*); and
- the legal nature of each of the parties involved in the litigation (*ratione personae*).

State courts will hear cases that do not fall under the jurisdiction of other courts.

The different federal and state courts and the type of disputes that they have jurisdiction over are as follows.

**Federal Low Courts**

These courts are scattered over the capitals and major cities of Brazil. In general, these courts have jurisdiction to hear most disputes in which the federal government, federal bodies and agencies and some federal companies take part as plaintiffs, defendants, or intervening parties. Also, these courts have jurisdiction over disputes involving a foreign government or organism and companies or individuals domiciled in Brazil or disputes involving one of the referred foreign entities and a Brazilian city government.

**State Low Courts**

Each state is empowered to organize its own Judiciary Branch. These courts are spread almost all over the country and have jurisdiction to rule on most disputes between private parties. In addition, these State Low Courts have jurisdiction over disputes involving some federal corporations (like Petrobras) in case of disputes based on private law or state and municipal environmental laws, disputes involving the government of the respective state, as well as state-owned companies, and cities' governments and city-owned companies. Furthermore, there are low courts specialized in bankruptcy (and even in case a federal body takes part of the bankruptcy/rehabilitation proceedings, for instance, as a creditor, this will not result in jurisdiction of the federal courts in detriment of the particular state bankruptcy court), and intellectual property disputes.

**Federal High Courts**
Their territorial jurisdiction is divided into five different regions (each covering two or more states). In most cases, these courts rule the appeals filed in the lawsuits started in the Federal Low courts located in the applicable region.

**State High Courts**

Generally, these High Courts rule over the appeals filed in lawsuits started at the State Low Courts where the respective High Court is located.

**Superior Court of Justice**

This federal court is located in Brasilia, the country’s capital. One of the main roles of this court is to rule over appeals filed against decisions rendered either by a Federal or State High Court when:

- such decisions contravene a treaty, convention or federal law; or
- upon the analysis of a given treaty, convention or federal law, such decisions conflict with precedents issued by the Supreme Court of Justice or the Supreme Court on the same matter.

It is also the court responsible to grant the exequatur of foreign decisions or judgments in Brazil. An exequatur is a legal document that permits the enforcement of a foreign decision or judgment within the jurisdiction of the court giving the exequatur.

**Supreme Court**

It is the last of the Brazilian judiciary and, like the Superior Court of Justice, is located in Brasilia. One of the main roles of this federal court is to rule over appeals against decisions rendered by a Federal or a State High Court or, even, decisions rendered by the Superior Court of Justice, when these decisions:

- directly contravene the Brazilian Constitution;
- declare a given treaty, convention or federal law as unconstitutional; or
- relate to a law or ordinance deemed valid and issued by the relevant authority in one of the Brazilian states or cities in detriment to the Brazilian Constitution.

Further, Brazil does not have a separate administrative jurisdiction, which means that the judicial branch including the federal and state courts have jurisdiction over all disputes, including disputes involving the executive branch or state-owned entities.

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
- agreements with an arbitration clause.

**Limitation**

The general statutory limitation period for filing civil claims in Brazil is ten years from the date when the cause of action arose but such term is shorter for specific types of claim (e.g. the limitation period for bringing a tort claim is three years).

**Procedural steps and timing**

Only the federal government may legislate on civil and commercial procedures. The Code of Civil Procedure, enacted in 2015, is applicable to civil litigation proceedings and other matters for which no specific procedural rules exist. The Brazilian Federal Constitution limits trial by jury to criminal cases involving homicide.

As a general rule, representation by an attorney in civil proceedings is mandatory in Brazil. The only exception relates to lawsuits filed with
the Small Claim Courts by individuals seeking to recover:

- in State Courts, an amount below the equivalent of 20 times the minimum wage; or
- in Federal Courts, an amount below the equivalent of 30 times the minimum wage.

The current minimum wage in Brazil (2019) is BRL998 (approximately USD257).

Civil lawsuits are initiated when the plaintiff files a petition in the relevant court. The plaintiff must serve the respondent with the filed petition and such service must take place at least 20 business days prior to a mandatory conciliation hearing, which the respondent is required to attend. This mandatory hearing:

- will take place before the court; and
- shall be scheduled at least 30 days in advance.

Should the parties fail to reach an agreement at the mandatory hearing, the respondent must file its defense within 15 business days of the date of the conciliatory hearing.

The judge may discharge the parties of their obligation to attend a mandatory conciliatory hearing. If this happens, the respondent must file a defense within 15 business days after it is served with the notice of the parties being discharged of the obligation to attend a mandatory conciliatory hearing. In cases where there is more than one respondent, the beginning of such term is the day after the last respondent is served.

After the respondent files a defense, the plaintiff has 15 business days to reply to the respondent's allegations.

The parties have five business days, counting from the day of the decision granting them the opportunity to present evidence, to inform the court of the evidence they wish to rely on. Timeframes for this evidence presentation phase may vary depending on the complexity of the matter.

Finally, after the evidence presentation phase, the judge may grant the parties the opportunity to file their closing arguments before rendering a judgment.

The usual total timeframe for a lawsuit to be ruled upon depends mainly on the complexity of the case, the relevant court competent for judging the case, the evidence the parties want to present and the number of appeals the parties decide to file. It may range from five months (in lawsuits in which it is not necessary to present any evidence) to three years, in accordance with the table below:

<table>
<thead>
<tr>
<th>INITIAL TERM</th>
<th>FINAL TERM</th>
<th>NUMBER OF DAYS / MONTHS / YEARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>Mandatory conciliatory hearing</td>
<td>40 business days</td>
</tr>
<tr>
<td>Mandatory conciliatory hearing</td>
<td>Defense</td>
<td>15 business days</td>
</tr>
<tr>
<td>Defense</td>
<td>Decision granting opportunity for reply</td>
<td>1 month</td>
</tr>
<tr>
<td>Decision granting an opportunity for reply</td>
<td>Reply</td>
<td>15 business days</td>
</tr>
<tr>
<td>Reply</td>
<td>Decision granting opportunity for requesting evidence production</td>
<td>1-2 months</td>
</tr>
<tr>
<td>Decision granting opportunity for requesting evidence production</td>
<td>Petition requesting evidence production</td>
<td>5 business days</td>
</tr>
<tr>
<td>Petition requesting evidence production</td>
<td>Beginning of evidence production phase</td>
<td>1-2 months</td>
</tr>
<tr>
<td>Beginning of evidence production phase</td>
<td>Closing of evidence production phase</td>
<td>1-2 years</td>
</tr>
</tbody>
</table>
Disclosure and discovery

Under the Brazilian Code of Civil Procedure, parties must ordinarily rely on their own evidence. However, a party can request the disclosure of documents or objects if there are grounds for believing that documents are in the other party’s possession and that such evidence is relevant to the case. The other party must be granted five business days to reply to such requests. Also, where the court considers the analysis of a document or object necessary for reaching a decision, it may order the party in possession of such evidence to submit it for analysis.

If a relevant object(s) or document(s) is in possession of a third party, they may be ordered to present it to court. Furthermore, if a party or the third party refuses to comply with the disclosure order without an acceptable reason, the court may issue a search and seizure order.

Default judgment

Default judgments can be applied for in proceedings in any court when a respondent does not file a defense within the relevant time period (as long as the respondent has been duly served). As a result of such failure, and except in cases such as those specified below, the allegations formulated by the plaintiff will be presumed to be true. The judge will continue with the proceedings on that basis, consider the merits of the plaintiff’s claim, and ordinarily rule in the plaintiff’s favor provided that the plaintiff discharges its burden of proof.

The presumption that the plaintiff’s allegations are true does not arise every time that the respondent has been duly served but fails to file a defense. For example, such presumption will not arise when the lawsuit deals with personal rights (such as the right to live), or when the plaintiff has not presented essential documents and information to persuade the judge on the strength of its claims. In the latter case, the judge will order the plaintiff to specify the evidence it intends to present.

On the other hand, even when a default judgment has been granted, the respondent can object to the default judgment before the court that granted it. Such objection will be made when there are issues related to the service of process, which can cause the entire lawsuit to be nullified from its beginning.

Also, the respondent in default is allowed to participate in the lawsuit as long as it does not seek to modify measures that have already been adopted during the proceedings. For example, the respondent will not be able to file a defense once default judgment has been granted but will be able to present evidence to challenge plaintiffs’ allegations.

Appeals

In Brazil, parties may file an appeal against interlocutory decisions and final judgments. The term for the parties to file any appeal is 15 business days from the date the judgment is notified to the parties (with the exception of a motion for clarification, which must be made within 5 business days). After an appeal is filed, the opposing party has 15 business days to file a reply. Although it is very difficult to predict the duration of an appeal in Brazil, the average time for the Federal or State High Courts to render judgments varies from 12 to 30 months.

Appeals before a State High Court are decided by a panel of three judges (in some cases it is possible for a single judge acting alone to decide the case). Each state has a High Court that will rule the appeals against decisions issued by the State Low Courts. Appeals filed against decisions issued by Federal Low Courts shall be decided by the Federal High Courts.

As noted in Overview of the court system, the Superior Court of Justice has jurisdiction to rule over appeals filed against decisions rendered either by a Federal or State High Court when:

- such decisions contravene a treaty, convention or federal law; or
upon the analysis of a given treaty, convention or federal law, such decisions conflict with precedents from the Superior Court of Justice or the Supreme Court on the same matter.

The Supreme Court can rule over appeals against decisions rendered by a Federal or a State High Court or, even, decisions rendered by the Superior Court of Justice, when these decisions:

- directly contravene the Brazilian Constitution;
- declare a given treaty, convention or federal law as unconstitutional; and
- relate to a law or ordinance deemed valid and issued by the relevant authority in one of the Brazilian states or cities.

The duration of an appeal in the Brazilian High Courts (Federal or State) depends mainly on the complexity of the matter under dispute. The average duration of a High Court appeal is 36 months.

**Interim relief proceedings**

In Brazil, the Courts are entitled to grant two different kinds of interim relief measures:

- Urgent interim relief, which may be granted in cases where a party claims that their right is at risk of being irretrievably lost before the final award is given;
- Evident interim relief, which may be granted even when there is no immediate risk, but the right of the party seeking relief is substantially plausible and duly evidenced.

Thus, the Brazilian Code of Civil Procedure allows the parties to request interim relief measures where:

- there is enough evidence of the certainty of the plaintiff's right (Evident); or
- it is necessary to avoid irreparable harm that a party may suffer should the relief not be granted before the end of the proceedings (Urgent).

Interim relief measures can be sought before proceedings have commenced, during the proceedings and after it, while pending execution of the judgment. In both cases, the alleged right may be challenged at a later stage in the proceedings.

The most common interim reliefs in civil litigation cases are:

- injunctions, requiring a party to do or not do a particular act;
- suspension of legal effect of certain acts; and
- attachment orders to preserve assets (see further details in Prejudgment attachments and freezing orders).

The suspension of legal effect of certain acts means the temporary suspension of judicial acts (e.g. releasing one of the parties from the terms of an agreement or excluding a debtor's name from the data base of credit protection agencies). In such cases, the judicial acts will not produce effects so long as the interim orders remain valid. However, if a lawsuit is dismissed or rejected, the legal effect of the judicial act will resume.

It is possible for urgent injunction applications to be heard by the judge *inaudita altera pars* or *ex parte*, without the opposing party's involvement. In urgent injunction applications, neither the opposing party nor its attorney is granted the opportunity to file a defense. There is no provision in the Brazilian Code of Civil Procedure specifying the term within which a judge should analyze the request for an urgent injunction *inaudita altera pars*, but it usually takes no longer than 48 hours. Whenever a judge grants an interim relief measure *inaudita altera pars*, the party against whom the decision was issued can file an appeal within 15 business days of the notification of the judgment to the parties.

The party who requests an urgent interim relief shall be held liable for damages caused to the other party if:

- the final judgment rejects the plaintiff's claims;
- the plaintiff does not provide the necessary measures to serve the respondent with the lawsuit within five business days of the granting of the pre-action interim relief;
- the relief becomes ineffective; or
• the judge accepts the respondent's allegation of statutory limitation period for filing the lawsuit.

As a general rule, parties seeking interim relief measures must be represented by an attorney, except when such measures are brought by an individual before Small Claim Courts.

Prejudgment attachments and freezing orders

Prejudgment orders and freezing injunctions are categories of interim relief, and therefore the principles noted in Interim relief proceedings apply to applications relating to prejudgment attachments and freezing orders too.

The Brazilian Code of Civil Procedure allows parties to request prejudgment attachments and freezing orders as provisional remedies before:

• the court that will have jurisdiction to hear the merits of the main claim if these measures are sought pre-action; or
• the court that is hearing the main claim if the main proceedings are pending.

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; and
  • the risk of loss to which the plaintiff is exposed; and
  • the 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 respondent will be given five business days from the date when he was served to file a defense and specify the evidence that he/she intends to produce. If a defense is not filed within this five business days, the court will:

• presume that the facts alleged by the plaintiff are correct; and
• render a final decision on the interim relief application within five business days of the expiry of the term given to the respondent to file their defense.

If a defense is filed, the judge will either:

• ask the parties to present their evidence requests; or
• render a final decision on the interim relief request. There is no timeframe regarding this decision.

Where a prejudgment attachment/freezing order has been granted, the plaintiff must file a claim on the merits within a maximum of 30 days after the provisional remedy has been enforced. Thereafter, the lawsuit follows the ordinary procedural steps, as described in Section: Procedural steps and timing above.

As noted in Interim relief proceedings, where the plaintiff also argues that the prejudgment attachment/freezing order must be granted on an urgent basis, the provisional remedy can be enforced by the judge inaudita altera pars or ex parte. In this case, neither the opposing party nor its attorney is granted the opportunity to file a defense. There is no provision in the Brazilian Code of Civil Procedure specifying the term within which a judge should analyze the request for an urgent injunction inaudita altera pars, but it usually takes no longer than 48 hours. Whenever a judge grants a prejudgment attachment or a freezing order (or indeed any other interim measure) inaudita altera pars, the party against whom the decision was issued can file an appeal within 15 business days.

If granted, assets will be attached in a specific order of priority:

• money, in cash or in a deposit or invested at a financial institution;
• Federal, State and Federal District government bonds listed on the market;
• bonds and securities listed on the market;
• land vehicles;
• real estate property;
• personal property in general;
• livestock;
• vessels and aircraft;
• membership interests and shares in partnerships and companies;
• percentage of the revenues of companies;
• precious stones and metals;
• rights of acquisition from a promise of sale or a fiduciary sale; and
• other rights.

If the attachment causes any damages to the respondent, the respondent is entitled to request the competent judge to either:
• revoke the attachment; or
• substitute the asset attached.

Frequently, respondents allege that the assets cannot be attached because they are crucial to their survival, for example, their salary or household appliances.

Creditors can be held liable for damages caused to the respondent when the attachment is based on an urgent request and if:
• the final judgment is unfavorable to the party who requested the attachment;
• the plaintiff does not provide the necessary measures to serve the respondent with the lawsuit within five business days of the granting of the pre-action attachment/freezing order;
• the attachment becomes ineffective; or
• the judge accepts the respondent's allegation of statutory limitation period for filing the lawsuit.

Costs

In Brazil, the unsuccessful party will be responsible for paying the litigation costs of the successful party. These litigation costs include:
• the judicial fees; and
• the other party's attorney's fees.

The judicial fees vary in each state. In civil litigation cases, attorney's fees will be fixed at minimum 10% and maximum 20% of the amount awarded in the judgment, the economic advantage of the party or, if it is impossible to measure it, of the total amount in dispute. Even though it is not common, the fees can be fixed at a lower rate in certain situations (for example, when the claim is dismissed).

When awarding attorney's fees, the judge will consider:
• the length of the proceedings;
• the nature of the claim;
• the professional attention to the case;
• the place where the service was performed; and
• the work provided by the lawyers.

The criteria for deciding the amount to be paid for attorney's fees comprise subjective elements, including the degree of professional attention to the case. In general terms, it is possible to consider that an attorney who has adopted a proactive approach in the lawsuit (e.g. the attorney has complied with the judicial requests in a timely manner, provided the necessary documents and evidence in order to guarantee a better quality of judicial decisions and has cooperated with the opposing party's attorney) is considered to have a high degree of attention to the case.
Finally, if the party is only partially successful, the courts may order a different percentage of the amount under dispute to be paid to each attorney based on the parties’ relative success or failure in the lawsuit.

**Class actions**

Federal Law no. 7.347/1985, which was enacted in 1985, provides legal grounds for class actions in Brazil. Despite the fact that class actions are not limited to disputes involving consumer protection, the Brazilian Consumer’s Code contains further supplementary provisions regarding class actions. Brazilian scholars make reference to both laws as the class action system.

The class action system does not generally relate to large commercial disputes, but to actions brought to protect selected social assets, namely:

- the environment;
- consumers;
- rights of artistic, aesthetic, historic, touristic and landscape value;
- diffuse and collective rights;
- economic and urban orders;
- honor and dignity of racial, ethnic and religious groups; and
- public and social assets.

Only a limited number of institutions are allowed to bring class actions on behalf of a group. These institutions include:

- public attorneys;
- the office of the public defender;
- federal government, states, and municipalities;
- autonomous federal government agencies or federal public companies; and
- specific non-governmental associations.

For a non-governmental association to be able to file a class action, it must be active for more than one year. Non-governmental associations also only have standing to sue in cases involving infringements of rights which are within the scope of their activities. For instance, an association created for protecting the environment will only be able to file a class action to request that a company refrains from polluting a river, but not to protect consumers.

Further, whenever the respondent is held liable in a class action and is ordered to pay the amounts owed under the judgment, the amount shall not be paid directly to the plaintiff, but to a public fund that is used to protect collective rights.

**Key contacts**

**Felipe Hermanny**  
Partner  
Campos Mello Advogados  
felipe.hermanny@cmalaw.com  
T: +55 21 3262 3020
Overview of court system

This overview describes the judicial system and practices in the Federal Court of Canada as well as most provincial/territorial courts. Variations from the prevailing approach are identified for the province of Quebec, which has a legal system distinct from those of all other Canadian jurisdictions.

Canada has a federal system of government where legislative power is divided between the federal Parliament on the one hand, and the ten provincial and three territorial Legislatures on the other.

For the purpose of this summary on dispute resolution in Canada, the provinces and territories will simply be referred to as the provinces. Further, while this summary is intended to provide a general overview of litigation in Canada, each jurisdiction has its own procedural rules and practices that may differ slightly from the general information provided herein.

The provinces each have a superior court. Superior courts are courts of inherent jurisdiction, which is to say that they hear cases on any matter except where a statute or rule specifically confers jurisdiction on some other court or tribunal. In addition to the provincial superior courts, there is also the Federal Court. The Federal Court does not have inherent jurisdiction but, rather, has a statutory jurisdiction over cases related to matters within the legislative jurisdiction of Parliament (e.g. intellectual property, aviation, competition (anti-trust), admiralty, immigration, etc.). The Supreme Court of Canada is the highest court in Canada and it is not possible to appeal its decisions.

Canadian jurisdictions have adopted the common law system, with one exception: the province of Quebec, which has adopted the civil law system. Specifically, Quebec has adopted the Civil Code of Quebec that is largely based on the Napoleonic Code of 1804. Unlike the common law, which has been described as judge-made law insofar as decisions are based on precedents, civil law – including civil law in Quebec – applies primarily the principles and rules codified in the jurisdiction’s civil code.

In Quebec and in the federal court system, civil matters are tried by the judge alone. In the common law Canadian provinces, civil proceedings can be tried by a judge alone, or by a jury. However, jury trials are the exception in civil proceedings and are rare in commercial disputes. Of note, there is no constitutional right to a jury in a civil case. Further, Canadian courts have discretion to direct that a matter be tried by a judge alone. The court is likely to exercise this discretion where the case is of moderate or greater complexity. Civil jury trials are more common in personal injury claims and in some employment law cases.

A monetary judgment obtained in a provincial superior court cannot be enforced outside of the province in question. However, all provinces (other than Quebec) have enacted legislation that provides a shortcut to the enforcement of extra-provincial judgments (with the exception of judgments obtained in Quebec).

Limitation

Though there is some variance among the Canadian jurisdictions, a civil claim must typically be commenced within the two-year anniversary of the date on which the underlying cause of action arose. The limitation period will be extended if the claim could only be reasonably discovered at some point later than the date on which the cause of action arose (as might be the case where, for example, a fraud perpetrated on the plaintiff or a latent defect in a consumer product could only reasonably be discovered at some later point in time).
Procedural steps and timing

The sequence of a legal proceeding is similar across Canadian jurisdictions. A plaintiff initiates a proceeding by drafting a claim and then having the claim issued by the court. The plaintiff must then take steps to personally serve the issued claim on all defendants in the action. Any defendant who wishes to then defend the proceeding must serve a defense. While there are variations among jurisdictions, a defendant’s defense is generally due within 20 days after service of the plaintiff’s claim, provided that the defendant was served within the territorial jurisdiction of the court that issued the claim. If the defendant was not served within the territorial jurisdiction of the court that issued the claim, the defendant is permitted more time in which to serve a defense. In the province of Ontario, for example, a defendant served outside Ontario but in Canada or the US has 40 days to serve a defense, while a defendant served outside of Canada and the US has 60 days. It is not uncommon for the parties to agree to extend the time by which a defendant must serve a defense where the defendant can point to extenuating circumstances (e.g. the complexity of the case, difficulty in retaining counsel, etc.).

In addition to defending the plaintiff’s proceeding, defendants may also bring:

- a counterclaim against the plaintiff (i.e. where the defendant has an independent cause of action against the plaintiff, or seeks some relief in the proceeding other than the mere dismissal of the action, such as a declaration as to the parties’ rights and obligations);
- a crossclaim against another defendant (i.e. a claim for contribution and indemnity against another defendant in the event that the cross-claiming defendant is found liable to the plaintiff); or
- a third-party claim (i.e. a claim in which a defendant seeks contribution and indemnity from a party that is not yet a party to the litigation).

The plaintiff’s claim and the defendants’ defenses, counterclaims, crossclaims, and third-party claims are known as the pleadings. The pleadings define the scope of the dispute among the parties.

The length of a proceeding will be, among other things, a function of the complexity of the case, the number of parties involved, the volume of documents and the conduct of the parties (e.g. whether a plaintiff advances a case with diligence and/or whether a defendant seeks to delay proceedings). That said, a general timeline for a legal proceeding of moderate complexity is as follows:

- service of claim: (D);
- delivery of pleadings: D + 2 months to 4 months; (* See note below)
- exchange of documents: D + 8 months to 12 months;
- completions of examinations for discovery: D + 15 months to 24 months;
- motions regarding discoveries: D + 24 months to 30 months;
- mediation (if required/applicable): D + 30 months to 36 months; and
- completion of trial: D + 36 months to 48 months.

Generally, individuals may, as of right, represent themselves in legal proceedings. Exceptions to this general rule include individuals who are minors, who are representative parties in a class action proceeding, or who lack mental capacity. A corporation typically must be represented by a lawyer (which includes an in-house lawyer) unless the corporation obtains leave of the court to represent itself (e.g. to be represented by an officer, director, or shareholder of the corporation).

* Note: For example, if the claim were served on January 1 (“D”) of any given year, all subsequent pleadings would typically be delivered between March 1 (i.e. D + 2 months) and May 1 (i.e. D + 4 months) of that same year.

Disclosure and discovery

For proceedings that are defended, parties will enter the discovery phase once the exchange of pleadings is complete. Discovery in Canada includes the production of relevant documents and oral examinations for discovery.

The scope of discovery is defined by the pleadings insofar as the pleadings set out the relevant issues in the litigation. Thus, if a document
is relevant to an issue identified in the pleadings, it should be produced (subject to certain exceptions, such as any privilege that might attach to the document) even if the document might be unhelpful to the party producing it. Quebec has a different starting point for discovery. Specifically, a party to a Quebec proceeding need only disclose those documents on which it intends to rely at trial, unless the opposing party specifically requests further production.

If a party refuses to produce a document that another party believes is relevant to the issues in the proceeding, the latter party may bring a motion for production of the document. A court will order such production where the relevant documents are not protected by privilege and where the request for production is “proportional.” As an example of the principle of proportionality, a court could refuse to order a party to spend considerable time and resources to produce a large volume of documents where such documents are only marginally relevant to the issues in the proceeding.

In addition to producing relevant documents, the parties will participate in oral examinations for discovery. During such oral examinations, each party puts forth a witness to be questioned under oath by the other parties (or the other parties’ respective lawyers where such parties have lawyers) about the matters that are relevant in the litigation. Examinations for discovery, among other things, allow the parties to:

- learn about the other parties’ cases;
- obtain helpful admissions; and
- assess the credibility and the demeanor of the witnesses giving evidence on discovery.

Where a party to be examined for discovery is an individual, the witness on such examination will be the individual.

Where the party to be examined for discovery is a corporation, the corporation’s witness (typically, but not always, an employee of the corporation) should be the person with the greatest knowledge of the matters that are relevant in the litigation.

Absent agreement of the parties or a court order, each party only produces a single witness that is examined for discovery by the other parties. Quebec is the exception to this general rule: under its Civil Code of Procedure, a party may examine more than one witness for each opposing party. As a matter of practice, parties in Quebec will attempt, among other things, to determine the number and identity of witnesses to be examined in the course of negotiating a case protocol. If the parties cannot agree to the terms of a case protocol, they may seek the court's intervention.

More often than not, the witness produced by a party for examination for discovery will also be a witness for that party at trial.

Where a witness being examined does not know the answer to a relevant question, they may be asked to give an undertaking to seek out the answer. Similarly, a witness being examined may be asked to undertake to produce any relevant documents that have not yet been produced.

Unlike some other jurisdictions, witnesses being examined for discovery in a Canadian proceeding may refuse to answer a question on the bases, among others, of relevance (i.e. the question does not relate to any of the issues raised in the pleadings) or privilege. If the witness refuses to answer an arguably proper question, the examining party may bring a motion to compel the witness to do so. Likewise, if the witness refuses to provide an undertaking to produce additional relevant documents, the examining party may bring a motion to compel such production.

Parties to a Canadian proceeding require leave of the court to examine a non-party for discovery.

**Default judgment**

Where a defendant does not file a defense within the specified time in which to do so, a plaintiff may obtain judgment in the defendant’s absence (default judgment). The first step in this process is for the plaintiff to note the defendant in default for having failed to file a defense. Where a defendant is noted in default, the defendant is deemed to admit to all of the facts as out in the plaintiff's claim, and the defendant is precluded from taking any further steps in the litigation (other than asking the court to set aside the noting in default).

If the claim is uncomplicated and seeks payment of a specific and readily-quantifiable amount (as would be the case in a claim for non-payment of an invoice), then non-judicial court staff may grant default judgment.

Where the claim is more complicated and/or where damages need to be assessed, the plaintiff will be required to bring a motion for default judgment. For the purpose of such a motion, and as mentioned above, the facts in the plaintiff's claim are assumed to be true. Despite this, the plaintiff must still establish that the facts entitle the plaintiff to judgment (e.g. that the facts are sufficient to satisfy the
appropriate legal test), and the plaintiff may be required to lead evidence to establish the quantum of damages.

A defendant against whom default judgment has been ordered may seek to set aside the default judgment. To be successful on a motion to set aside default judgment, the defendant must:

- bring the motion without delay after learning of the default judgment;
- explain the circumstances for failing to defend the claim within the time for doing so; and
- show an arguable defense to the claim.

**Appeals**

A judgment in a civil matter made by a provincial superior court can be appealed to an appellate court within the province. The highest appeal court in each province is known as the Court of Appeal. Judgments made by the Federal Court can be appealed to the Federal Court of Appeal which, likewise, is the highest appeal court in the Federal Court system. The Supreme Court of Canada hears appeals from provincial Courts of Appeal and the Federal Court of Appeal. An appeal to the Supreme Court of Canada typically requires leave by the Supreme Court of Canada itself. Where this is the case, leave is only granted where the appeal raises issues of public importance. As mentioned, there is no further appeal of a decision of the Supreme Court of Canada.

An appeal of a judgment made by a provincial superior court or the Federal Court must typically be commenced within 30 days of the date of the judgment. Such appeals are normally heard within a year from the date of the judgment. The appeal court in question may issue a decision at the hearing of the appeal itself or may issue its decision some months later (although, generally, no more than 12 months later).

Leave to appeal a decision to the Supreme Court of Canada must be commenced within 60 days of the appeal court decision that is being appealed. On average, the Supreme Court of Canada will decide a leave motion within six months, oral argument of the appeal on its merits will then occur within a further six months to a year, and a decision on the appeal will typically be delivered within an additional six months.

**Interim relief proceedings**

Canadian courts have discretion to grant interim relief to parties to a proceeding. Such relief can take the form of an injunction (an order requiring a party or a non-party to refrain doing certain acts) or a mandatory order (an order requiring a party or a non-party to perform some particular act).

Injunctions and mandatory orders can be granted either as interim relief (i.e. before the issues in the proceeding have been finally determined) or as an ultimate remedy. For example, a court could order an interim injunction preventing a defendant from using the plaintiff's confidential information until the matter is ultimately decided by the court, and then, following the trial of the matter, the court could order a permanent injunction preventing a defendant from ever using the plaintiff's confidential information. When injunctions and mandatory orders are sought as interim relief, they can be sought after a proceeding is commenced and up until judgment in the proceeding is rendered.

A party seeking interim relief must prove that:

- there is a serious issue to be tried;
- the party would suffer irreparable harm (i.e. harm not compensable in damages) if the injunction or mandatory order were not granted; and
- the balance of convenience favors the granting of the injunction or mandatory order.

A party may obtain an interim injunction or mandatory order without notice to, or the involvement of, the other parties where the injunction or mandatory order is urgent, or where providing notice of the motion for an injunction or mandatory order would undermine the purpose of the injunction or mandatory order (as would be the case where the intended injunction seeks to prevent a party from disposing of assets). Any injunction or mandatory order made without notice will generally have a temporal limit: it will only remain extant
until such time that the parties receive notice of the injunction or mandatory order, and are given an opportunity to contest the injunction or mandatory order in court. A party seeking an interim injunction or mandatory order will ordinarily be required to give an undertaking to pay any damages suffered by the parties affected by the injunction or mandatory order where:

- the damages are directly related to the interim injunction or mandatory order; and
- the party that obtained the injunction or mandatory order is ultimately unable to prove its claim at trial.

Typical injunctions or mandatory orders granted by Canadian courts include the following:

- **Mareva orders** that prohibit a defendant from disposing of property prior to judgment (see further details in Prejudgment attachments and freezing orders);
- **Norwich orders** that compel non-parties to provide information to the party seeking the order. The information sought further to a Norwich order may help to identify potential defendants, to find and preserve evidence that may support a claim against known or potential defendants, or to identify assets;
- **Anton Piller orders** (i.e. civil search warrants) that provide the right to search premises and seize evidence;
- Labor injunctions that restrain unlawful picketing; and
- Injunctions that restrain the continued infringement of intellectual property, or the misuse of confidential information.

A motion for an injunction or mandatory order made without notice to the opposing parties can often be heard by the court within a matter of days. If the party seeking such an injunction or mandatory order is ultimately successful, such that the court issues a temporary or interim injunction or mandatory order, the opposing parties are given the opportunity to have the interim injunction or mandatory order set aside or varied further to a subsequent motion. Such subsequent motions can often be heard within a few weeks of the original interim injunction or mandatory order made without notice (or even sooner than that if the urgency of the situation so dictates).

An injunction or mandatory order that is made on notice (i.e. because it is not urgent, or because providing notice of the motion for the injunction or mandatory order would not undermine the purpose of the injunction or mandatory order itself) can often be heard within one to three months (depending on the complexity of the factual and legal issues relating to the motion for the injunction or mandatory order).

Other forms of common interim relief include the following:

- an order relaxing the rules related to the service of court documents;
- an order striking out those portions of a pleading or an affidavit that make allegations that are frivolous or vexatious;
- an order for a Certificate of Pending Litigation that is registered on title to property and therefore puts prospective purchasers, mortgagees, etc., on notice that there is an ongoing lawsuit relating to the property in question;
- an order setting a timetable for the litigation, or requiring a party to comply with a timetable;
- an order requiring a party to produce relevant documents;
- an order requiring a party to answer a question that the party refused to answer on an examination for discovery; and
- an order requiring a plaintiff to pay money into court.

An appeal of an order made on a motion for interim relief must generally be commenced within ten days of the date of the order.

Generally, individuals may, as of right, represent themselves on motions for interim relief. On a motion for interim relief, a corporation typically must be represented by a lawyer (which includes an in-house lawyer) unless the corporation obtains leave of the court to represent itself (e.g. to be represented by an officer, director, or shareholder of the corporation).

**Prejudgment attachments and freezing orders**

Provincial superior courts and the Federal Court can grant interim freezing orders, known as **Mareva orders**, which restrain a defendant from disposing of property prior to judgment. Canadian courts issue **Mareva orders** to prevent possible abuses of process and/or frustration of court-ordered remedies, as would be the case where a defendant is dissipating, or is likely to dissipate, assets so as to frustrate the enforcement of any potential judgment against the defendant.
Motions for a *Mareva* order are brought after a proceeding has already been commenced. That said, such motions can be brought:

- before a defendant has been served with the claim; and
- without notice to the defendant in order that the motion may achieve the objectives set out in the previous paragraph.

A *Mareva* order is an interim order that merely preserves a defendant's assets until the matter can be resolved on its merits. Accordingly, once a plaintiff obtains a *Mareva* order, it is incumbent on a plaintiff to seek to obtain judgment on the merits of the case.

The criteria for the issuance of a *Mareva* order are similar to the criteria for the issuance of other forms of interim relief. Specifically, to obtain a *Mareva* order, the moving party must demonstrate the following:

- a strong *prima facie* case (i.e. a strong case at first glance);
- that the defendant has assets in the jurisdiction; and
- that there is a serious risk that the defendant will remove property or dissipate assets before judgment.

Plaintiffs can be held liable for any damages caused to the defendant by the *Mareva* order. In addition to satisfying the above test, a plaintiff seeking a *Mareva* order must undertake to the court that it will compensate a defendant affected by the *Mareva* order in circumstances where:

- the defendant suffers damages as a result of the *Mareva* order, and
- the court later finds that the *Mareva* order should be set aside or should not have been granted in the first place.

The reach of a *Mareva* order is broad: it can apply to personal effects, bank accounts, real estate, shares, and income streams, among other things.

**Costs**

Where a party to a Canadian proceeding is successful in obtaining relief in the proceeding (or in some interlocutory step in the proceeding, such as on a motion), the court will generally require any parties that opposed the relief to pay a portion of the successful party's costs, namely, legal fees and disbursements (e.g. photocopying expenses, process server fees, experts' fees, etc.).

Where the parties have had partial success in the proceeding (or some step in the proceeding), courts may award costs having regard to the parties' relative success. Though it happens rarely, courts may decline to award a successful party its costs where the court finds that the successful party's conduct was objectionable.

It is unusual that a successful party will recover all of its costs from the opposing parties. By default, a successful party is entitled to costs on a partial indemnity or party-and-party basis. Costs on a partial indemnity basis are typically 40-50% of the successful party's actual legal costs. In rare circumstances, parties may recover costs on a substantial indemnity or solicitor-and-client basis. Where this is the case, the successful party may be awarded 60-75% of its actual legal costs. Substantial indemnity costs may be awarded where the conduct of the unsuccessful party was reprehensible (as might be the case where an unsuccessful plaintiff's accusations of fraud were found to be completely devoid of merit, or where the conduct of an unsuccessful party unnecessarily increased the time and expense of the proceedings).

Where a party rejects an offer to settle, and then obtains a result at trial that is equal to or less favorable than the rejected offer, adverse costs consequences will normally accrue to the party. The rationale behind this approach is that the party rejecting the offer did not obtain a better result at trial and unnecessarily caused all parties to incur the additional expense of trial.

Court fees (i.e. fees paid directly to the court for such steps as commencing a lawsuit, defending a lawsuit, or bringing a motion) are generally not more than CAD400 per procedural step. A party that succeeds in its lawsuit (or on some smaller step in the lawsuit, such as a motion) is generally able to recover its court fees from the unsuccessful parties.

**Class actions**

In all Canadian jurisdictions, a representative or class proceeding may be commenced by a person as a representative of numerous persons who have a similar interest in the proceeding. A similar interest does not need to arise out of the same action or transaction, but requires a shared interest in the determination of some question of law or fact.
The action does not proceed as a class action unless and until it is certified on a certification motion (or, in Quebec, an authorization motion). On such a motion, the issue is not whether the class action is likely to succeed on the merits but, rather, whether a class action is an appropriate manner of proceeding. The following are some of the requirements for certification of an action as a class action:

- there is an identifiable class of two or more persons;
- the claims of the class members raise common questions of law or fact;
- a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and
- there is a representative plaintiff who is well suited to represent the interests of the class.

In Canadian jurisdictions other than Quebec, parties to a certification motion often file voluminous evidentiary records that may include experts’ reports. Where this is the case, the certification motion may stretch out over several days. In an authorization motion in Quebec, however, the facts alleged by the plaintiff are taken to be true, the motion may only be contested orally, and the defendants require leave of the court to file evidence. For this reason, Quebec is often seen as being a friendly jurisdiction for the institution of a class proceeding.

A certification motion may proceed in two stages. At the first stage, the court will consider the above factors to determine the threshold issue as to whether the proceeding is appropriate to proceed procedurally as a class action. At the second stage of the certification motion, the court may determine the description of the class and define the common issues.

If the court certifies the proceeding as a class action it will provide direction as to how class members are to receive notice of the class action. Once they receive notice, class members can choose to opt out of the class action. A class member who opts out of the class will not share in any award or settlement in the class action, and will not be bound by any order made in the class action. Having opted out, they may pursue their claims on an individual basis or simply choose not to pursue them at all.

Key contacts

David Foulds
Partner
DLA Piper (Canada) LLP
david.foulds@dlapiper.com
T: +1 416 941 5392
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 15 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, given that 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 5 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;
- 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 upon 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 probationary. 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 irremediable 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 10 days, 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 become 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;
- 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**
Macarena Iturra
Counsel
DLA Piper Chile
miturra@dlapiper.cl
T: +56 2 2798 2616

Ricardo López V.
Counsel
DLA Piper Chile
rlopez@dlapiper.cl
T: +56 2 2798 2668
Overview of court system

The People's Republic of China (PRC) is a civil law jurisdiction and the judicial system is organized into four levels:

- the Basic People's Courts;
- the Intermediate People's Courts;
- the High People's Courts; and
- the Supreme People's Court.

Usually, major foreign related cases fall within the jurisdiction of the Intermediate People's Court. A major foreign related case is a case: (i) in which either the claimant or defendant is a foreign party from outside mainland China; and (ii) that involves a large claim, has complex merits, or involves a large number of foreign parties. In practice, different courts apply different standards for determining what constitutes a large claim.

Limitation

In the PRC, the general limitation period for civil claims is three years. Special limitation periods apply to certain causes of action.

Procedural steps and timing

In the PRC, parties are not required to be represented by an attorney in order to commence civil proceedings. Generally, a civil lawsuit is commenced by filing a statement of claim. The statement of claim must set out the cause(s) of action and claim(s), and needs to be supported by documentary evidence. The court has seven days to review the statement of claim and its supporting evidence and decide whether or not to accept the case. Where the case is accepted, the court will serve a copy of the statement of claim on the defendant within five days of accepting and this will constitute notice of the claim. Generally, the defendant must file its statement of defense with the court within 15 days of receipt of the notice of the claim. The time limits may differ if a party to the lawsuit has no domicile in the PRC (for example, a defendant who has no domicile in the PRC has 30 days to file its statement of defense). The court will then send a copy of the statement of defense to the claimant within five days of receiving it.

The court will also set a period for the submission of evidence. During this period:

- all evidence should be submitted;
- the defendant is entitled to file counterclaims (if any); and
- both parties are entitled to submit a written application (before the period expires) for an extension of time.

An oral court hearing (a trial) will then be scheduled and the timing of this will depend on the court's workload. The parties will be notified three days before the hearing. The court hearing usually includes two parts: (i) the investigation of the facts; and (ii) the presentation of arguments. During the investigation of the facts, the parties present their own case and present evidence, including oral evidence given
by factual witnesses. The evidence is cross-examined by the other party and is also examined by the court. The presiding judge will then summarize the issues in dispute and the parties will put forward their respective further arguments on those issues. The law clerk will prepare a transcript of the hearing.

A judgment must be given within six months of the court's acceptance of the case and can be given at the end of the oral hearing. The time limit to issue the judgment can be extended for six months with the approval of the court's president, and the court may seek further extensions from a higher court. A simple civil claim to which ordinary procedure applies and in respect of which no extensions are sought is generally resolved within six months of the court's acceptance of the case.

Disclosure and discovery

In the PRC, although parties must substantiate their cases with evidence, in principle they are free to determine what evidence they want to use. A court may, however, order a party to submit certain additional evidence if it considers it necessary. Failure to comply with the court's order may cause the court to draw adverse inferences. Further, whilst there is no concept of legal privilege in the PRC, any evidence containing state secrets, personal information or business secrets will not be publicly presented during an open hearing.

Under the PRC Civil Procedure Law, a party may request the court to investigate and collect evidence on its behalf if the party and its representative are unable to collect it for objective reasons, including because: (i) it is archived by state authorities and the party has no right of access to it; or (ii) it contains national secrets, trade secrets or personal information. The court is also empowered to investigate and collect evidence which the court deems necessary. Procedurally, if a party requests the court to investigate and collect evidence on its behalf, the requesting party should submit a written application stating:

- basic information of the person to be investigated (name, address, workplace, etc.);
- the evidence to be investigated and collected;
- the reasons for making the request; and
- the facts to be proved by the evidence.

Pursuant to Article 95 of Interpretation of the Supreme People's Court on Application of the PRC Civil Procedure Law (the SPC Interpretation on Civil Procedure), the request for collection of evidence should be rejected if the evidence requested is unrelated to the facts to be proven, meaningless for proving the facts or the court considers that it is unnecessary to investigate it.

It should be noted that, in practice, courts rarely grant requests for collection of evidence. This is partly due to the vaguely defined concept of objective reasons, which leaves the discretion to the court, and partly due to the fact that such requests will place additional burdens on the courts, which already struggle with heavy caseloads.

Under the law of the PRC, interim relief for evidence preservation is available both during and prior to the commencement of legal proceedings if evidence is at risk of being destroyed or may become difficult to obtain at a later date. A party can apply to the competent court for evidence preservation, and the court can also take preservation measures on its own initiative. The party requesting the evidence preservation will usually be required by the court to provide security in case such evidence preservation causes losses to other related parties.

Default judgment

Pursuant to Articles 143, 144 and 145 of the PRC Civil Procedure Law, the court may enter into a default judgment when:

- a defendant refuses to appear in court without justifiable reasons after being summoned or leaves the courtroom during the oral hearing without permission from the court;
- if the defendant has filed a counterclaim, the claimant refuses to appear in court without justifiable reasons after being summoned or leaves the courtroom during the oral hearing without permission from the court; and
- the claimant requests withdrawal of the action before a judgment is made, but the court decides not to grant the withdrawal and the claimant refuses to appear in court without justifiable reasons after being summoned.

If the default judgment is issued by the first instance court, the party against which the default judgment is imposed may appeal. As the judgments issued by second instance courts are generally final, a default judgment issued during an appeal process will not usually be subject to challenge. That said, if there is any procedural defect with a default judgment (e.g. the party has not been served with a
summons), the party may challenge the default judgment by applying for a retrial.

**Appeals**

Judgments and orders made by the courts below the Supreme People's Court can be appealed once to the higher court, but, as noted above, judgments and orders of second instance courts are generally final and binding upon the parties. After a second instance judgment, the parties may only apply to the Supreme Court for a retrial in exceptional circumstances. The case will need to be of significant interest from a policy, legal and social justice perspective for the Supreme Court to grant a retrial request.

Parties can file an appeal against a first instance judgment for alleged fact-finding errors or errors in the application of the law or procedure within 15 days of notification of the judgment. The higher court will review both the facts and the application of the laws and, if necessary, will hold an oral hearing. Generally speaking, an appeal case is completed within three months of the court's acceptance of the appeal. If an extension is needed, approval from the court's president is required.

**Interim relief proceedings**

Under the law of the PRC, interim relief (i.e. a provisional measure) is mainly granted for evidence preservation, asset preservation, specific performance and advance execution. However, specific laws also provide for other special interim reliefs. For example, the PRC Special Maritime Procedure Law provides certain types of interim relief applicable to maritime claims.

Interim relief can be granted before or during a litigation or arbitration. The applicant will usually be required to file a written application with supporting documents to the competent court, but the specific procedure depends on the type of interim relief that a party is seeking to obtain. For instance, a detailed outline of the procedure for an application for an asset preservation order is provided in Prejudgment attachments and freezing orders.

Interim relief would only be granted before the commencement of court proceedings or an arbitration in circumstances where the evidence or property at stake would be irreparably damaged without the interim relief being granted. Before interim relief is granted by the court, the applicant is usually required to provide security. Generally, the court shall make a decision about whether or not to grant interim relief within five days of accepting the application or after security has been provided. In urgent circumstances, the court shall make the decision in 48 hours. Once a pre-action interim relief is granted, the applicant is required to commence arbitration/court proceedings within 30 days from the date of enforcement of the interim relief order. If this deadline is not complied with, the court may revoke the pre-action interim relief. Representation by an attorney is not mandatory for interim relief applications.

Should any party wish to challenge the interim relief order, it can apply to the court for reconsideration within five days of receipt of the ruling, and the court shall review and decide the reconsideration application within ten days of receiving it. The enforcement of the interim relief order shall not be suspended during the reconsideration process.

It is worth noting that on April 2, 2019, Hong Kong and Mainland China signed an Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings, pursuant to which, parties to certain institutional arbitrations seated in Hong Kong shall be entitled to apply through those institutions for interim relief from the people's courts in Mainland China. This Arrangement makes Hong Kong the first and only seat of arbitration outside Mainland China to have access to interim relief from the people's courts in Mainland China.

**Prejudgment attachments and freezing orders**

In China, prejudgment attachments and freezing orders are referred to as asset preservation orders. Asset preservation is an important category of the interim reliefs available under PRC law. In the PRC, asset preservation is the equivalent concept to freezing orders. It consists of an ex parte procedure which (as prescribed in various laws) allows applicants to, among other things, seal, seize and freeze assets. Like other types of interim relief, a party can apply for asset preservation both during and prior to the commencement of legal proceedings on the basis that "a party's conduct or other reasons will make enforcement of the arbitration award / judgment difficult or cause other loss and damages to the applicant." When necessary, the court is also empowered to make an asset preservation order at its own discretion.

Applications for asset preservation must be made to a court: (i) located in the same place as the properties to be preserved; (ii) located where the respondent is domiciled; or (iii) which has jurisdiction over the case. To apply for asset preservation, the party must submit a written application and provide relevant supporting documents. The written application should detail:
- information relating to the counterparty;
- the request for asset preservation;
- the facts and reasons on which the asset preservation application is based;
- the requested value of the asset to be preserved; and
- the need to provide security.

The court may demand the requesting party to provide security if it deems necessary. The amount to be provided as security will usually be limited to no more than 30% of the requested value of the asset to be preserved.

Asset preservation is limited to the assets referred to in the written application or assets related to the case. The types of asset that can be subject to asset preservation include:

- immovable property, such as land or buildings; and
- movable property, such as funds in a bank account, vehicles or other objects owned by the party against whom the asset preservation application is being made.

When the asset preservation order has been granted pre-action, the claimant must file the relevant claim subsequently. As with any other interim relief measure granted pre-action, if the claimant fails to commence a court proceeding / arbitration within 30 days of the court’s asset preservation order, the court shall lift the order.

The claimant may be liable for any losses caused to the defendant arising from the preservation of the defendant's assets if: (i) the asset preservation order was applied in error; or (ii) the claimant is ultimately unsuccessful with its claim.

**Costs**

Pursuant to Article 13 of the Measure on the Payment of Litigation Costs, the claimant shall pay the case acceptance fees to the court at the time of filing the claim within seven days of the court’s notification of payment. The acceptance fees are calculated by reference to the sum in dispute (or pursuant to the relevant laws if it is a non-property case). For example, for a monetary case where the sum in dispute is CNY1 million, the case acceptance fee would amount to CNY13,800 and would be calculated by adding together the costs under each of the staggered tiers, as set out below:

<table>
<thead>
<tr>
<th>THE AMOUNT CLAIMED</th>
<th>APPLICABLE RATE</th>
<th>FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>For any amount no more than CNY10,000</td>
<td>A fixed fee</td>
<td>CNY50</td>
</tr>
<tr>
<td>For any amount above CNY10,000 but no more than CNY100,000</td>
<td>2.5%</td>
<td>CNY2,250 (90,000 x 2.5% )</td>
</tr>
<tr>
<td>For any amount above CNY100,000 but no more than CNY200,000</td>
<td>2%</td>
<td>CNY2,000 (100,000 x 2%)</td>
</tr>
<tr>
<td>For any amount above CNY200,000 but no more than CNY500,000</td>
<td>1.5%</td>
<td>CNY4,500 (300,000 x 1.5%)</td>
</tr>
<tr>
<td>For any amount above CNY500,000 but no more than CNY1 million</td>
<td>1%</td>
<td>CNY5,000 (500,000 x 1%)</td>
</tr>
</tbody>
</table>

**Total case acceptance fees:** CNY13,800

Additional costs might be incurred if evidence is obtained outside of the PRC as translation, notarization and legalization of the evidence would be required. The court acceptance fees and such out-of-pocket expenses would be paid by the unsuccessful party.
A court will also charge when a party requests it to enforce a judgment, an interim relief order or an arbitral award. Such fees are also calculated by reference to the sum in dispute.

Similar to the principle of “costs follow the event” in common law jurisdictions, as a general principle, the costs of an action are usually awarded to the successful party. However, lawyers’ fees fall entirely within the discretion of the court. The court may wish to follow the recommended fee scale issued by the government, which might be significantly lower than the actual lawyers’ fees. If the scale is used, the successful party may only be able to recover part of its lawyer’s fees.

Class actions

In the PRC, a civil action involving two or more claimants and / or defendants is referred to as collective action rather than class action.

Amendments made to the 1991 Civil Procedure Law (2012 Amendments), effective from January 1, 2013, introduced a provision regarding public interest collective actions, under which an authority or organization prescribed by law may institute a collective action for conduct that pollutes the environment, infringes upon the lawful rights and interests of a large group of consumers or otherwise damages public interest.

More recently, by virtue of the amended Civil Procedure Law, effective from July 1, 2017 (2017 Amendments), the organizations that are entitled to bring public interest collective actions are no longer restricted to those prescribed by the law. The new provision allows the people's procuratorates (which are the PRC's prosecution organs) to file a collective action where there is no such organization authorized by law to bring the action or such organization fails to do so.

To initiate a collective action, the following four conditions need to be satisfied:

- there are two or more claimants or defendants;
- the subject of the cause of action for each party is the same, or is of the same kind;
- the court considers that such multi-party claims may be dealt with collectively; and
- the parties involved consent to such collective action.

If the number of litigants on one side of a collective action is large, these litigants may be represented by two or no more than five representatives. Pursuant to the SPC Interpretation on Civil Procedure:

- if there are more than ten litigants, that is considered large;
- if the litigants fail to select any representatives, the court may nominate representatives for the litigants or designate representatives at its discretion; and
- each of the representatives may be represented by one or two attorneys.

If the claimants or defendants under a collective action cannot be fixed at the time the case is filed, potential participants may join the action by registration as follows:

- the court may issue a public notice, specifying the circumstances of the case and notifying others with similar interests to register with the court;
- the people's court has discretion to determine the term of public notice on a case-by-case basis, although this term must not be less than 30 days;
- potential participants who seek to register with the court should demonstrate their legal relationship with the opposing party and the damages they have suffered. Those failing to do so would not be registered but could still file a separate lawsuit; and
- the court's decision on the collective action will bind those who have registered with the court. Subject to the court's interpretation, such decision may also apply to those litigants who do not register with the court but who bring similar claims within the statutory limitation period.

Key contacts
Kevin Chan
Partner, Head of Litigation and Regulatory, Asia
DLA Piper Hong Kong
kevin.chan@dlapiper.com
T: +852 2103 0823
Overview of court system

Finnish courts operate under the civil law system. Decisions of a District Court can be appealed to a Court of Appeal if leave for continued consideration is granted by the Court of Appeal. Decision of the Court of Appeal can be appealed to the Supreme Court, provided that the Supreme Court grants leave to appeal. In Finland, there are 27 District Courts, five Courts of Appeal and the Supreme Court.

In addition, Finland also has Administrative Courts which review the decisions of the authorities. The decisions of the Administrative Courts can be appealed to the Supreme Administrative Court, which in some cases requires leave to appeal from the Supreme Administrative Court.

There are also certain special courts in Finland including:

- the Market Court (hearing among others, IP, competition and public procurement cases);
- the Labour Court;
- the Insurance Court; and
- the High Court of Impeachment.

Decisions of the Market Court and the Insurance Court can be appealed to the Supreme Court or the Supreme Administrative Court depending on the nature of the matter. Decisions of the Labour Court and the High Court of Impeachment are final and thus non-appealable.

Limitation

In Finland, the general limitation period for initiating court proceedings in civil matters is three years, which may be interrupted by a notice to the counterparty. The limitation period of three years begins to run from a certain due date (invoice, date of performance under a contract etc.), or when the plaintiff knew or should have known about the cause of the claim. Further, there is a parallel limitation period of ten years, which is irrespective of the knowledge of the plaintiff.

Procedural steps and timing

Ordinary civil law cases are initiated by filing a written application for a summons with the District Court registry. Following receipt of the application by the registry, the case becomes pending. To the extent possible, the application for a summons should indicate:

- the specified claim of the plaintiff;
- the circumstances on which the claim is based;
- claim for compensation of legal costs; and
- the evidence that the plaintiff intends to present.
If the matter is not in dispute and relates to a debt of a specified sum, the application for a summons only needs to include the circumstances on which the claim is based. In this situation, there is no need to identify or include the evidence in the application.

After receiving the application for a summons, the court will issue a summons which will need to be served on the defendant by mail or by bailiff. The plaintiff can serve the summons on the defendant where: (i) the plaintiff asks to be entrusted with the service of a notice; and (ii) the court deems there to be good reason the summons to be served by the plaintiff. The serving process usually takes at least a few weeks, and there is no specific deadline to serve the summons to the defendant. After service of the summons, the defendant is then usually granted a period of 30 days to file their statement of defense, although this period can be extended at the defendant's request for example, to allow the defendant sufficient time to prepare the defense. Following the filing of the statement of defense, the court may request that the parties each provide the court with a written statement outlining the exact issues that are in dispute (i.e. the plaintiff will set out the issues it disputes from the statement of defense, and the defendant will set out the issues it disputes from the plaintiff's written statement). The submission of these written statements (if requested) completes the written phase of the proceedings.

The oral phase of the proceedings will then begin, which will start with a preparatory hearing where issues relating to the preparation of the hearing will be discussed, and after which an oral hearing will be scheduled. Timeframes vary greatly and depend on various factors, including the complexity of the case and the workload of the court. In general, in a straightforward civil law case, the time from filing the application for a summons until obtaining a judgment varies between 12 to 24 months.

It is not mandatory to use an attorney or counsel in court proceedings, except in circumstances when a party applies for annulment of a judgment or files a complaint on the basis of a serious procedural error in the Supreme Court. In the event that a party decides to use counsel, only an advocate (a member of the Bar), a public legal aid attorney or counsel who has obtained the license referred to in the Licensed Counsel Act (715/2011) are entitled to act as counsel. Further, a layperson may act as counsel in non-contentious civil matters. Finally, in-house counsel may represent their employer.

**Disclosure and discovery**

In a civil law case, each party shall present the evidence it deems necessary in the case. The court may not request disclosure of evidence of its own initiative. However, the court may order a party or a non-party to bring an object or a document in its possession to court where so requested by a party to the case, provided that the object or document could be of evidential significance in the case. This procedure is not intended to facilitate fishing expeditions and therefore the party requesting the submission must carefully define the document or group of documents that the request covers. After hearing the other party and/or the party the request is directed at, the court will decide on whether to permit the request. Where the document requested includes, for example, commercially sensitive information of a company or other privileged information, the court may oblige a party to produce a redacted copy of the document.

**Default judgment**

Where a defendant fails to deliver its written statement of defense before the deadline set by the court, the relief sought by the plaintiff will be awarded in a default judgment. In the default judgment, the court will award the relief sought by the plaintiff in the statement of claim, unless the relief in question is evidently unfounded.

Default judgments may also be awarded at the request of either party if the opposing party does not attend the hearing. However, a default judgment: (i) against the plaintiff will not be awarded where the claim is evidently well-founded; and (ii) against the defendant will not be awarded where the claim is evidently unfounded.

The party against whom the default judgment has been rendered has the right to appeal it in the court that awarded the default judgment within 30 days of the date on which the appealing party received verifiable notice of the default judgment.

**Appeals**

Judgments of the District Court may be appealed to a Court of Appeal based on merit. A party who wishes to appeal a judgment of a District Court must declare its intention to appeal the judgment within seven days of the judgment being handed down. The deadline for filing the actual appeal is 30 days from the date of the District Court judgment. Leave for continued consideration is required in all civil law cases and the party filing the appeal shall indicate the grounds for the appeal. The Court of Appeal will usually decide whether it grants leave for continued consideration within two to three months of the request for leave for continued consideration. Thereafter, provided that leave for continued consideration is granted, the Court of Appeal will usually resolve the appeal within approximately 12 months.
Leave to appeal must be requested from the Supreme Court in order to appeal a Court of Appeal judgment. Leave to appeal will only be granted on certain limited grounds which relate to the uniformity of legal practice and severe procedural errors that have occurred in previous phases. The appellant has 60 days from the date of the Court of Appeal judgment to: (i) apply for leave to appeal; and (ii) file the appeal. The Supreme Court will decide whether it grants leave to appeal within approximately six months of the request for leave to appeal. Thereafter, provided that the leave to appeal is granted, the Supreme Court will usually resolve the appeal in 14 months.

Interim relief proceedings

All Finnish courts have the power to grant interim relief and it is not mandatory to use an attorney or counsel when applying for the interim relief. Interim relief measures are usually meant to secure the object of the dispute before the resolution of the court, or prevent the defendant from losing its assets. The application for interim relief may be sought before or during court proceedings.

Common interim relief applications in Finland include applications to attach property, shares and / or receivables of the defendant (for further details please see Prejudgment attachments and freezing orders); prohibit the defendant from acting in a certain manner; order the defendant (or allow the applicant) to do something; or order other measures necessary to secure the applicant's right. In intellectual property related matters, the court may be requested to issue a prejudgment attachment order in order to secure evidence before filing the claim on the merits.

Obtaining an interim relief judgment can be a relatively quick procedure. Usually, applications for interim relief will be made on notice, and the opposing party has the right to be heard. However, in cases of urgency, or in order to prevent the subject matter of the claim from being compromised, the application may be made ex parte. If the court considers that there are grounds for interim relief (namely: (i) the claimant has a prima facie right; and (ii) there is a risk of irreparable harm if the interim relief sought is not granted), the decision may be obtained in a few days. However, very urgent ex parte applications may be resolved by the court even on a shorter timeframe, including on the day of the application.

If the court grants the relief sought, the applicant shall seek to enforce the court's interim relief order from the enforcement authorities. Before enforcement, a party seeking relief will, as a general rule, be obliged to provide security for any loss that the defendant may incur as a result of the relief.

The justification for the interim relief will be decided together with the court's decision on the merits. A party who has unnecessarily applied for interim relief is liable to compensate the opposing party for the damage caused by the measure and its enforcement and to cover the expenses incurred in relation thereto.

The court's order regarding the interim relief can usually be appealed separately. It takes approximately two to three months for the upper court to resolve the appeal.

Prejudgment attachments and freezing orders

All Finnish courts have the power to grant prejudgments attachments and freezing orders, which are precautionary measures that can be either interim or final. The application for any type of precautionary measure shall be delivered to the court where the proceedings of the main claim are pending or, where if no court proceedings are pending, it is usually the court of the defendant's domicile.

In practice, all kinds of property, shares and / or receivables belonging to an opposing party can be attached by the enforcement authorities up to an amount that secures the applicant's claim.

An applicant for precautionary measures must prove that:

- it is probable that he or she holds a debt or prior right to a property against the defendant; and
- there is a danger that the defendant will hide or destroy the property or otherwise endanger the payment of the debt if the measure is not granted.

In practice, the threshold for granting an injunctive measure or a freezing order is quite low.

As a general rule, an application will not be granted without giving the opposing party an opportunity to be heard (i.e. the applications will usually be made giving the defendant notice). However, to prevent the subject matter of the claim from being compromised, the court may, upon the request of the applicant, grant the relief sought, which remains in force until further notice. If the court determines that the
requirements to grant the precautionary measures above have been met, the court may issue its decision within a few days of the application and without notice to the defendant. The decision will then be enforced by the enforcement authorities. In such cases, the defendant will be granted an opportunity to give its response only after the decision on the interim relief has been made and enforced.

If no court proceedings are pending before granting the prejudgment attachment or freezing order, the applicant must bring a claim on the merits within one month of the issue of the relief order by the court. Where the proceedings are not initiated within the said period, or if the case is discontinued, the precautionary measure will be reversed. Based on the written statements of the parties and the evidence presented, the court will later render its final decision on the relief.

A party seeking relief will, as a general rule, be obliged to provide a security for any loss that the defendant may incur as a result of the relief.

The expenses incurred by the enforcement of the relief shall be covered primarily by the applicant. The issue of the final liability to cover the expenses will be decided, on the request of a party, in the final determination. A party who has unnecessarily resorted to a precautionary measure is liable to compensate the opposing party for the damage caused by the measure and its enforcement and to cover the expenses incurred in relation thereto.

The applicant shall seek enforcement of the court's prejudgment attachment order from the enforcement authorities.

Costs

The costs of litigation can be divided into court fees and legal fees, the latter creating the most significant part of the costs. In a general civil law case, the court fee amounts to EUR510 in all court phases (EUR510 per court phase, i.e. a total of EUR1,530 if the case proceeds to the Supreme Court). The unsuccessful party will usually be ordered to reimburse all reasonable legal costs (i.e. lawyer's fees and disbursements) of the winning party.

Where several claims have been made in the same case and some have been decided in favor of one party and others in favor of the other, the parties are, as a general rule, liable for their own legal costs. The court may modify this rule to reflect the parties' relative success and failure in the case. It is important to note that based on Supreme Court practice, there is a rule pursuant to which a court will not award costs to a successful party if the relief generally obtained is no more favorable than an offer that has been made by its opponent in the settlement negotiations.

Class actions

It is possible to file a class action in civil cases between a consumer and a company provided that several persons have claims against the same defendant and the claims are based on the same or similar circumstances. Further, it is required that the hearing of a class action claim is conducted expediently in view of:

- the size of the class;
- the subject-matter of the claims; and
- the evidence offered.

A class action can be filed in disputes concerning a defect in consumer goods and interpretation of the terms of contract as well as disputes concerning sales and marketing of investment products and insurances.

However, a class action may only be filed by the Consumer Ombudsman when it has made a decision, and the Consumer Ombudsman will represent the class and acts as a plaintiff. In general, class actions are not common in Finland.

Key contacts

Jussi Savonen
Partner
DLA Piper Finland Attorneys Ltd.
jussi.savonen@dlapiper.com
T: +358 9 4176 0455
Overview of court system

France has a civil law legal system, based on codified laws. When deciding cases, judges must interpret the law. Lower courts are not bound by higher courts' decisions, although decisions of higher courts have a certain influence over the lower courts and are considered to be persuasive.

In France, the court system is divided into two major branches: a judicial branch and an administrative branch. First instance judicial courts are divided into courts of general jurisdiction (including criminal courts and civil courts) and specialized courts, such as labor courts and commercial courts.

The civil court system consists of District Courts and High Courts. District Courts (Tribunal d’Instance) have jurisdiction over civil matters that have a value of between EUR4,000 and EUR10,000. District Courts have exclusive jurisdiction over certain types of litigation regardless of the value of the case. District Courts handle, for example, litigation between tenants and landlords that concern lease agreements.

High Courts (Tribunal de Grande Instance) are ordinary civil courts and have jurisdiction in all civil matters that have a value in excess of EUR10,000, except the types of litigation that other civil courts have exclusive jurisdiction over. In addition, French High Courts have exclusive jurisdiction, regardless of the value of claim, over matters involving civil status, filiation and nationality, as well as in any real estate litigation or patent and trademark infringement proceedings.

France has two specialized courts, the Labour Courts (Conseil des Prud'hommes), which have jurisdiction in all litigation cases between employers and employees, and the Commercial Courts (Tribunal de commerce), which handle cases involving commercial transactions or litigation between professionals. The judges in both Labour Courts and the Commercial Courts are non-professional judges.

There are 36 civil Courts of Appeal in France and one civil Supreme Court (Cour de cassation), which is the court of last instance.

Limitation

There is a five-year limitation period usually (but not systematically) starting from the day the claimant knew, or should have known, the facts giving rise to its claim. Five years is the general statutory limitation period for filing civil and commercial claims but different periods may apply depending on the course of action.

Procedural steps and timing

In general, the court that has territorial jurisdiction to hear a civil claim is the court of the defendant's domicile. Exceptions to this rule may apply in certain contract or tort law matters. Representation by an attorney is mandatory before the High Court but it is not necessary for claims before the district courts, the Commercial Courts and the Labour Courts.

In order to initiate proceedings, a claimant must serve a writ of summons on the defendant. A writ of summons needs to be delivered to the defendant by a bailiff within the relevant limitation period. The writ of summons must substantiate the claim and be supported by relevant exhibits. After the summons has been served, the court will usually schedule a procedural timetable for the exchange of pleadings between the parties. The number of exchanges depends on the complexity of the case but, on average, the parties exchange
two rounds of submissions and the defendant is generally allowed to file the last submission. Once each party has had an opportunity to present its arguments, the dates for:

- the closing of the exchange of the pleadings; and
- a trial hearing for oral arguments will be scheduled.

Based on our experience, the average duration of a case before the first instance courts (both civil and commercial) is around one year. However, for complex matters requiring three or more rounds of submissions from each party and/or giving rise to procedural issues (e.g. issues in respect of document production), a case may last between 18 and 24 months, and sometimes longer. The workload of the court may also impact the length of the proceedings.

**Disclosure and discovery**

In France, the parties are free to choose the evidence in support of their respective claims. Each party must substantiate its claims and satisfy its burden of proof. Evidence is usually given in written form, including by way of affidavit.

Despite the above, the French Code of Civil Procedure allows for pre-action disclosure when there is a legitimate reason to preserve or to establish the evidence on which the resolution of the dispute depends (pursuant to Article 145 of the French Code of Civil Procedure). The collection of evidence in such circumstances will most likely be done via an *ex parte* court order appointing a bailiff to preserve or establish such evidence.

During the course of the proceedings, if a party wishes to force another party to produce certain evidence, it may request the court to order production of such evidence provided it can demonstrate that the evidence is relevant to the case. This gives rise to a discussion between the parties that is separate from the merits. If a party refuses to comply with a court order for the production of evidence, the court is entitled to draw any conclusion it deems appropriate based on the circumstances.

**Default judgment**

Where a defendant does not appear in proceedings (i.e. does not answer to the summons itself or fails to bring forward an attorney to represent it, when representation by an attorney is mandatory), the court will issue a decision on the sole basis of the evidence presented by the claimant.

A defendant facing a default judgment may file an opposition before the court which issued the default judgment within a month of the notification of the default judgment to the defendant and within three months if the defendant resides abroad. This opposition from the defendant will result in the proceedings being reopened.

**Appeals**

As a matter of principle, first instance decisions can usually be appealed. Appeals against decisions of a first instance court are lodged before the Court of Appeal with territorial jurisdiction. This said, the latest trend has been to designate courts of appeal to handle certain types of disputes (insolvency, antitrust, etc.). For certain type of cases (e.g. proceedings involving competition or stock-market authorities), all the appellate litigation is concentrated before the Paris Court of Appeal. Appeals have to be lodged within a month of the notification of the judgment, except if the appellant resides abroad (in which case the timeframe is extended for an additional two-month period). Appeals are typically resolved within 12 to 24 months after the notice of appeal is filed.

Appeals before the French Supreme Court are only intended to assess whether there has been a breach of legal principles or procedural rules. Such appeals have to be lodged within two months from the notification of the Court of Appeal’s decision, except if the claimant resides abroad (in which case the timeframe is extended to a four-month period). The French Supreme Court does not conduct a full factual assessment of the case. Appeals before the French Supreme Court are typically resolved within 12 to 24 months after the notice of appeal is filed.

**Interim relief proceedings**

The French Code of Civil Procedure provides for various kinds of expedited interim relief proceedings. Representation by an attorney is not mandatory in interim relief proceedings.
The interim relief judge (juge des référés) can order any precautionary, restorative or expert measures to prevent either immediate damage or irreparable loss and/or to safeguard the rights of the claimant (e.g. to suspend or stop the diffusion of an article harming privacy). The interim relief judge can also order the payment of a debt when there are no serious grounds to challenge it. Applications for interim relief may be sought before or pending final judgment but they are usually sought before bringing an action on the merits.

Interim relief proceedings start with obtaining a date for the hearing with the interim relief judge (juge des référés). The hearing can take place at short notice, ranging from hours to a couple of months depending on the level of urgency. The judge must ensure that, based on the circumstances of the matter, the defendant has had sufficient time between the time of service of the summons and the hearing to prepare its defense. At the oral hearing, both parties can elaborate on their respective positions. The timeframe between the hearing and the order depends on the urgency of the matter.

In order to obtain interlocutory measures, applicants must demonstrate that:

- the relief sought must be granted as a matter of urgency; or
- there are no serious grounds to challenge the applicant's claim.

A party may appeal against an interim relief order within 15 days of the order.

Prejudgment attachments and freezing orders

A civil law claim may be preceded by an interim attachment over a debtor’s assets by way of an ex parte application to either the President of the High Court or the President of the Commercial Court which has jurisdiction. Prejudgment attachments and freezing orders are types of interlocutory measures and can be sought before, during or pending final judgment.

Attachments may target any kind of assets, including immovable and moveable assets, bank accounts, shares, etc. For the judge to order an interim attachment, two conditions must be met: (i) the debtor's obligation towards the creditor must appear to be founded; and (ii) the creditor must demonstrate that there are circumstances threatening the repayment of the debt (e.g. the debtor may dissipate its assets). In assessing the former, the judge evaluates whether the evidence prima facie supports the creditor's cause of action. Where an attachment order is granted, the debtor may seek its withdrawal before the same judge.

The creditor who obtained the attachment order from the judge must attach the asset within three months of the date of the order. After this time, the order is no longer valid. The creditor must commence an action on the merits within a month of the date of the attachment. In the event that the claim is not brought within the stipulated term, or the claim is dismissed in the proceedings on the merits, the creditor is liable for any damages caused to the debtor by the attachment.

Costs

In theory, the successful party is entitled to ask the court to order the unsuccessful party to reimburse its legal costs (pursuant to Article 700 of the French Code of Civil Procedure). However, except in cases where a party proves to be of particularly bad faith, judges are reluctant to award costs on an indemnity basis and the reimbursement of legal fees rarely covers the lawyers' fees in full. In most cases, the court fees will rarely exceed EUR10,000 (except for matters relating to intellectual property or annulment appeals of arbitration awards, where the court fees to be expected are closer to the incurred fees).

Class actions

After decades of debates and several aborted bills, class actions were introduced in France in 2014. Initially, they were limited to claims in the consumer law area. France has since created class actions in four other areas: health products, data privacy, environment and discrimination.

Further, a law enacted at the end of 2016 implemented a general framework applicable to class actions. Under the general rules of 2016, class actions can only be brought by specifically authorized associations. Such associations must have been duly registered for at least five years and their statutory purpose must include the defense of the interests that have been harmed.

The proceedings are divided in two phases: (i) a phase to define the class of claimants and the defendant's liability; and (ii) a phase to determine the amount of compensation to be paid to the individuals who suffered from the targeted wrongdoing. In France, the process works on the basis of a specific opt-in system. This allows consumers to apply to join the group after the decision on the defendant's liability.
Key contacts

Alexander Brabant
Partner
DLA Piper France LLP
alexander.brabant@dlapiper.com
T: +33 1 40 15 25 65
Germany

Last modified 19 July 2019

Overview of court system

Germany follows a civil law tradition and its civil jurisdiction consists of four types of judicial authorities:

- there are approximately 640 Local Courts (Amtsgerichte);
- 115 District Courts (Landgerichte);
- 24 Higher Regional Courts (Oberlandesgerichte), and
- the Federal Court of Justice (Bundesgerichtshof).

Moreover, in proceedings before the District Courts which concern matters of trade and commerce and, in particular, 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.

Before the District Courts and the Higher Regional Courts, legal representatives must be admitted to the German bar. In the Federal Supreme Court, only those attorneys who are specifically admitted to the German bar may appear.

German language is the mandatory language of the courts. Generally, all judicial documents and oral hearings will be in German. However, some Regional Courts offer the possibility of conducting oral hearings in English.

In general, the threshold for accessing the German courts to bring civil proceedings is low. Litigation risk is predictable and quantifiable as German law does not permit class actions, punitive damages or contingency fees. The Rule of Law Index 2019 published by the World Justice Project, ranks Germany third 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 moment when the claimant knew or ought to have known (whichever is the earlier):

- 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 will take ten months from serving the statement of claim until a judgment is issued. However, they can last much longer than ten months, especially when the facts are disputed and have to be established by the court. In around 30% of cases, court proceedings are discontinued in less than three months.

Disclosure and discovery

German law does not recognize the common law concept 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 defense), 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, causing the case to be reopened.

Appeals

Generally, a civil action begins at first instance 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. On average, the appellate courts will decide upon the case 12 months after the date of the judgment of the first instance court.

Furthermore, after receiving an appeal judgment, under certain conditions 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.
**Prejudgment attachments and freezing orders**

Freezing orders and preliminary injunctions can be issued within a short time period, i.e. within a week. The opposing party can appeal against a freezing order or preliminary injunction and such appellate proceedings generally will 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 has to be filed in the court that is competent to hear the main claim. In the case of a request to freeze assets, the request can also 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, which includes claims and shares of the debtor.

Preliminary injunctions secure the status quo for all non-monetary claims and can either be prohibitory (i.e. refrain from doing a specified act) or, in exceptional cases, mandatory (i.e. requiring a person to take certain actions).

In order 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 generally 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;
- its opponent having provided security in order 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 approximately EUR723 and for the first appeal are approximately EUR964. The statutory legal fees for each lawyer would amount to EUR1,500. 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 EUR230,000 for each party and court fees at EUR330,000. 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**

Despite a number of legislative initiatives in this area, the German legal system currently has no mechanism for bringing US-style class actions, which (i) allow a group of consumers to sue a company in a single legal proceeding brought by one or several plaintiffs; and (ii) result in a judgment or settlement that becomes binding on all members of the group or class.
On November 1, 2018, a new law allowing consumer class actions (referred to as model declaratory proceedings) entered into force in Germany. Unlike in the US, plaintiffs in model declaratory proceedings (i) must be represented by qualifying consumer protection associations; and (ii) still need to file individually for damages following the judgment on the matter because the new representative action only establishes the existence or non-existence of factual or legal conditions (not damages).

Moreover, for the model declaratory proceeding to be admissible:

- the qualifying consumer protection associations must show that at least ten consumers are affected by the allegations made in the lawsuit; and
- at least 50 consumers must register their claims in the "to-be-established claims" register of model declaratory proceedings within two months after it has been publically announced that a model declaratory proceeding has been filed. Other consumers may join until the first court date has been set.

Once the model declaratory proceeding is pending, no other action can be filed against the same defendant for the same cause of action.

A declaratory judgment can be appealed within one month of the judgment.

Furthermore, the service of a class action pursued in another jurisdiction on a German defendant can be challenged in the German courts with the argument that the service of a class action violates fundamental principles of the rule of law.

**Key contacts**

**Ludger Giesberts**

Partner
DLA Piper UK LLP
ludger.giesberts@dlapiper.com
T: +49 221 277 277 351
Overview of court system

In 1997, the People's Republic of China (PRC) assumed sovereignty over Hong Kong and Hong Kong is now a Special Administrative Region of the PRC. The Basic Law (which is a mini-constitution for Hong Kong) took effect on July 1, 1997 after the handover of Hong Kong from Britain to the PRC. All the laws previously in force in Hong Kong (including common law, statutes, etc.) are maintained under the Basic Law except for any that contravene the Basic Law, and subject to any amendment by the Hong Kong Legislative Council. National laws of the PRC are not applied in Hong Kong except those listed in Annex III of the Basic Law, which concern matters such as consular privileges and immunities.

Hong Kong operates under the common law legal system and its courts are separate from those in the PRC. Commercial disputes exceeding HKD3 million (around USD385,000) are usually brought in the Court of First Instance of the High Court. For smaller claims, they are brought in the District Court or the Small Claims Tribunal. There are also specialized courts and tribunals, such as the Labour Tribunal and Lands Tribunal, which handle specific types of disputes. The highest appellate court in Hong Kong is the Court of Final Appeal, which hears appeals on both civil and criminal matters.

Limitation

In most commercial disputes, the limitation period for a claimant to commence a civil action is six years from the date when the cause of action accrued (for example, the date when the defendant committed the breach in a claim for breach of contract). However, in an action for breach of a contract created by deed, the limitation period is extended to 12 years from the date when the cause of action accrued. It is important to note that the Limitation Ordinance also prescribes shorter limitation periods for actions in respect of claims for personal injuries.

Procedural steps and timing

It is not mandatory for a party in any legal action in Hong Kong to have legal representation. Where the party is a corporate entity, a natural person (such as a director or officer of the entity) may be appointed with the permission of the court to act on its behalf in the legal action.

In general, the claimant would have to file a writ of summons with the relevant court to start a civil action in Hong Kong.

Once the writ of summons has been duly served on the defendant, the defendant must acknowledge service within 14 days (or, generally, 28 days if the defendant is served outside of Hong Kong with the court's permission) and state whether it intends to defend the action. The parties will then exchange pleadings (such as statements of claim (if not already served together with the writ of summons), defenses, and replies) which define the parameters of the dispute and the specific issues which are to be proved by each party. If a statement of claim was not served together with the writ of summons by the claimant, the claimant will need to file and serve it within 14 days of the filing of the defendant's acknowledgment of service and notice of intention to defend the action.

If the statement of claim was served together with the writ of summons by the claimant, the defendant has 28 days after the deadline for the filing of its acknowledgment of service to file and serve its defense. Otherwise, the defendant has 28 days after the relevant statement
of claim has been served by the claimant to file and serve its defense. Thereafter, the claimant has 28 days to prepare its reply. In general, timelines prescribed by the rules of the court can be extended either by application to the court or through consent of the parties (without any application to the court).

Once the exchange of pleadings is complete, parties will undertake the disclosure process and go on to prepare their evidence (which includes witness statements and, if applicable, expert reports) for a final hearing of the dispute. Parties are generally obliged to attend court at regular intervals during which orders are given to manage the conduct and timeframes of the case up until its final hearing.

The timeframe from the commencement of proceedings to handing down of judgment varies greatly depending on the complexity and case management style of an individual matter. Usually, relatively straightforward cases are ready to be set down for trial within two years from the commencement of proceedings. Complex cases, however, may take longer before they can be set down for trial.

Disclosure and discovery

In civil proceedings in Hong Kong, a party generally has a duty to disclose to the other party all documents relevant to the case that are within their custody, power or control, even if some of the documents are not favorable to their case. The disclosure process is usually undertaken after the pleadings have been filed as this is the time at which the points of dispute between the parties have crystallized. However, the court may also order disclosure prior to the commencement of proceedings where an applicant is able to satisfy the court that they need to obtain such disclosure in order to determine whether or not a cause of action exists against a potential defendant.

Each party to a civil action must disclose the relevant documents it possesses in the form of a list (known as the list of documents). Except for documents that are privileged, all other documents must be provided to the other party on request or made available for the other party's inspection. A party may refuse to disclose privileged documents to the other party. If there is a dispute as to whether a document is privileged, the court will make a final decision.

Default judgment

Default judgments can be applied for in civil proceedings in the District Court and the Court of First Instance where a defendant does not:

- give notice of intention to defend; or
- serve a defense, within a prescribed time limit.

A defendant may apply to set aside or vary a default judgment if it was irregular in any respect or if the defendant can show that it has a meritorious defense to the claim and that there is a reasonable explanation for why the judgment was allowed to go by default in the first place. In considering whether to set aside a regular default judgment, the court will take into account all the circumstances and may only make a setting aside order with terms imposed on the defendant (for example, requiring the defendant to pay all or a part of the sum(s) being claimed by the claimant into court).

Appeals

The Court of Appeal hears appeals from both the District Court and the Court of First Instance.

For civil cases in the District Court, a party who is not satisfied with the decision of a judge can apply to that judge for leave (permission) to appeal. The time limit for seeking leave to appeal is 28 days from the date of a final judgment (or 14 days from an interlocutory order or decision). If the judge refuses to grant permission to appeal, the party may apply for permission to appeal from the Court of Appeal within 14 days from the date of the judge's refusal.

For a case in the Court of First Instance, generally no leave is required for an appeal against a final judgment, but permission is still required for an appeal against an interlocutory order or decision of a judge of the Court of First Instance and the time limit for seeking leave is 14 days from the date of the interlocutory order or decision. Similar to an appeal from the District Court, if leave is refused by the Court of First Instance judge, the party may apply for permission to appeal from the Court of Appeal within 14 days from the date of the judge's refusal. The time limit for filing a notice of appeal against a final judgment of the Court of First Instance where no leave is required is 28 days from the date of the judgment.

Due to a number of factors, such as the availability of the parties and judges, it usually takes a minimum of six months before an appeal will be heard by the Court of Appeal. In terms of timeframe for resolving the appeal, there is no stipulated period and the timeframe for the Court of Appeal to issue a judgment varies depending on factors including the court's workload and the complexity of the case. For
Illustration purposes, the Court of Appeal may issue a decision in less than six months or it may take over a year.

For civil appeals, leave to appeal from either the Court of Appeal or Court of Final Appeal is required. Permission to appeal will only be granted if the question or questions involved in the appeal is / are of great general or public importance, or, if taking into account all the relevant circumstances such as merits, the appeal ought otherwise to be submitted to the Court of Final Appeal. The time limit for seeking permission to appeal to the Court of Final Appeal is 28 days from the date of the Court of Appeal judgment. If the Court of Appeal refuses to grant leave, a further application for leave can be made to the Court of Final Appeal within 28 days from the date of the Court of Appeal's refusal. The Court of Final Appeal will usually hand down its written judgments within approximately one year after leave has been granted. That said, much depends on how busy the Court of Final Appeal is and also on the complexity of the case.

**Interim relief proceedings**

The courts have wide power and discretion to grant interim relief to parties in proceedings. Like representation in ordinary proceedings, legal representation in interim relief proceedings is not mandatory. The most common interim relief applications by far are for interlocutory injunctions to restrain the commission of any particular act by the respondent until trial or a further order of the court discharging the injunction in question.

In brief, an application for interlocutory injunction may be made to restrain the commission of an allegedly wrongful act by the respondent when:

- there is a serious issue to be tried (i.e. the claim has some expectation of success and is not a merely fanciful one);
- monetary compensation given at trial for the allegedly wrongful act would not be an adequate remedy for the applicant;
- the applicant is able to compensate the respondent and other affected parties for losses and damage arising from the granting of the injunctive relief if ordered by the court to do so subsequently; and
- the balance of convenience favors the granting of the injunction. In deciding where the balance of convenience lies, the court will take into account all relevant circumstances of the case.

In appropriate circumstances, an application for interlocutory injunction may be made on an urgent *ex parte* (i.e. without giving notice to any of the other parties in the action) basis at the same time or immediately prior to the formal commencement of legal action. Such *ex parte* hearings are heard by the court as soon as possible, usually on the same day the application papers are filed with the court. If a party applies for an interlocutory injunction before an action is commenced, the injunction applied for will be granted by the court with a condition requiring the party to issue a writ of summons immediately or as soon as reasonably practical.

An application for interlocutory injunction is usually supported by the applicant's affidavit evidence. In an *ex parte* application, the applicant has a strict duty to make full and frank disclosure of all material facts (even those unhelpful to their case) to the court.

Other interim remedies available include but is not limited to the following:

- **Security for costs**: Where the claimant resides / is incorporated outside Hong Kong, a party can make an application for the claimant to pay a specified sum into court to meet any order for legal costs made at the trial.

- **Interim payments**: The general purpose of an interim payment is to reduce monetary hardship or prejudice that the claimant may suffer leading up to the trial. Where the defendant has already admitted liability or it is clear that, if the matter proceeds to trial, the claimant would obtain judgment for substantial compensation against the defendant, the court can require the defendant to make an advance payment to the claimant.

- **Anton Piller orders**: In order to prevent a defendant from destroying important documents / information, the court can grant an order which permits the claimant's representative to enter the defendant's premises to search for and seize certain documents which are relevant to the case.

- **Appointment of receivers**: A party in a dispute over the validity of the board of directors appointments of a company and / or the ownership of the controlling stake in a company may apply for the appointment of receivers to the company to take over control of the management until determination of the dispute by the court. The court may appoint receivers to the company if it is just and convenient to do so having regard to all the relevant circumstances.

It is rare for interim injunctive reliefs to be appealed. Normally, if the aggrieved party disagrees with the interim injunctive relief granted by the judge, it will make an application to have it discharged. For an interim injunctive relief obtained by the applicant on an *ex parte* basis,
an aggrieved party may make a discharge application at the return day hearing. The return day hearing is typically held within a week of the hearing at which such interim injunctive relief was granted by the court and its purpose is to provide an opportunity for the parties affected by the interim injunctive reliefs to make submissions to the court and for the court to decide whether the interim injunction should continue.

If no discharge application is made at the return day hearing or if there is no return day hearing because the application for interim injunctive relieve was not made on an *ex parte* basis, an aggrieved party may make an application to discharge the interim injunctive relief at any time. Such application will normally be heard by the court within three to six months and the court usually decides on the application within two to three months of the conclusion of the hearing.

Appeals against interim remedies other than injunctive relief are usually heard by the court within three to six months, and decided within three to six months. Timeframes for the handing down of appeal decisions may vary greatly and would be affected by factors such as how busy the court hearing the appeal is and the complexity of the case.

### Prejudgment attachments and freezing orders

Hong Kong courts can grant an interim freezing order, known as a *Mareva* injunction, which restrains a party from disposing of or dissipating its assets pending final judgment. A *Mareva* injunction is a type of interim relief, but the requirements that claimants must satisfy in order to obtain one are slightly different from the requirements referred to in *Interim relief proceedings*, as further explained below.

It is possible to apply for a *Mareva* injunction to freeze any valuable assets of the defendant such as money in bank accounts, real properties, or shares in companies. However, the *Mareva* injunction will only operate to restrain the defendant from diminishing the value of their assets to less than the amount (usually the amount claimed by the claimant) specified in the injunction order.

The initial application for a *Mareva* injunction can be made either to the Court of First Instance or the District Court and is usually heard on an *ex parte* basis. Like other types of interlocutory applications, if a party applies for a *Mareva* injunction before an action is commenced, the injunction applied for may be granted by the court with a condition requiring the party to issue a writ of summons immediately or as soon as reasonably practical.

Any orders given *ex parte* will generally operate only for a limited period of time until the matter can be brought to a hearing involving all parties (*i.e.* an *inter partes* hearing). An applicant seeking a *Mareva* injunction on an *ex parte* basis must provide full and frank disclosure of all matters relevant to the case, and will normally be obliged to give an undertaking to pay compensation for any losses or damage suffered by the opposing party in the event that the applicant later fails to prove that they are entitled to such an injunction order.

To obtain a *Mareva* injunction, an applicant must show that:

- it has a good arguable case on a substantive claim (*i.e.* a higher threshold than an application for an interlocutory injunction to restrain the commission of any allegedly wrongful act) which has already been commenced or is about to be commenced against the other party;
- the other party has assets within the jurisdiction;
- there is a real risk that the counterparty will dissipate or dispose of its assets unless restrained by the court; and
- the balance of convenience lies in favor of granting the injunction.

If the claimant asserts a proprietary claim over an asset currently in the possession of the defendant, the claimant may also apply for what is known as a proprietary injunction to restrain the defendant from disposing of or taking any action to diminish the value of the asset in question until final judgment.

To obtain a proprietary injunction, the applicant must show that:

- there is a serious case to be tried as to whether the applicant is the rightful owner of the asset;
- something ought to be done for the security of the asset, and that monetary compensation given at trial would not be an adequate remedy for the applicant; and
- the balance of convenience lies in favor of granting an injunction.
Costs

Hong Kong courts have wide discretion to award costs orders against a party in order to cover the opposing party's costs of litigation. The general rule is that the unsuccessful party will be liable to pay the legal costs of the successful party. Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect the litigants' relative success.

Costs orders are subject to a costs assessment process administered by the courts. It is unusual that a party will be able to recover all of its actual legal costs through this process. On a standard assessment, a successful party may recover approximately 60-70% of their actual costs. However, in certain circumstances, the courts may order the costs to be assessed on a more generous basis (such as on a common fund basis or indemnity basis) where the court is of the view that the successful party should recover a greater proportion of the costs it has incurred (such as when the opposing party has engaged in unreasonable conduct in the proceeding). If the parties cannot agree on the costs to be paid, the party which is awarded costs can proceed to have the costs assessed by the court (also known as taxation of costs).

In terms of fees payable to the courts, in general a claimant will only need to pay a nominal amount (approximately USD80 to USD130) in court fees to commence a civil action in Hong Kong. However, if the court is subsequently required by any party to undertake a taxation of costs, a taxing fee calculated on a sliding scale, generally at around 2-5% of the amount of legal costs claimed, will also be payable to the court by the party requesting the taxation.

Class actions

A representative proceeding may be commenced by or against any one person as a representative of numerous persons who have the same interest in the proceeding. A judgment in representative proceedings is enforceable against parties to the proceedings. If a party seeks to enforce the judgment against a person who is not an actual party to the proceedings but who is a member being represented, leave from the court is required.

Other than the representative proceedings as described above, Hong Kong does not have any mechanisms available for collective redress or class action. In 2009, the Law Reform Commission issued a report which recommended a new mechanism for class action. The Department of Justice established a cross-sector working group in 2012, and the working group has been holding regular meetings to study the proposals in the report in detail and consider ways to take the matter forward. However, it has yet to publish any findings or recommendations so far.

Key contacts

Kevin Chan
Partner, Head of Litigation and Regulatory, Asia
DLA Piper Hong Kong
kevin.chan@dlapiper.com
T: +852 2103 0823
Overview of court system

Hungary follows a civil law tradition, where codified statutes take precedence over judicial decisions. Disputes are resolved by a centralized four-level court system:

- 111 district courts operate as first instance courts;
- 20 general courts operate as first instance courts in some special cases and appellate courts in others;
- five courts of appeal operate as exclusively appellate courts; and
- the Curia operates as the ultimate supreme court in Hungary.

In addition, first instance labor law disputes and administrative proceedings are decided separately by one of the 20 administrative and labor courts (with the exception of certain special administrative cases, which go to the general courts instead).

Even though the Constitutional Court cannot be regarded as part of the Hungarian court system in a traditional sense, it has one important competence in litigation matters: a party may challenge a decision before the Constitutional Court if all available judicial remedies have been exhausted and the decision is based on a law that is incompatible with the Fundamental Law of Hungary, or if the judgment itself is unconstitutional.

In 2018, Hungary's procedural law went through a complete overhaul. New laws were introduced covering arbitration, civil, criminal and administrative court proceedings, in addition to new laws on administrative and tax proceedings. At the time of writing, there remains a substantial amount of uncertainty surrounding the interpretation of many provisions of these new laws.

Limitation

The time limit within which claims may be submitted is a matter of substantive law. In most cases (e.g. damage claims and breach of contract cases), the limitation period is five years. However, in some cases this period is considerably shorter (e.g. 30 days for administrative review proceedings).

Procedural steps and timing

Legal representation is mandatory before the general and appellate courts, and the Curia. In particular, when the general courts have first instance jurisdiction, the statement of claim has to be submitted by an attorney.

The new Code of Civil Procedure, which came into force on January 1, 2018, introduced a two-phase procedure in civil and commercial cases. First, there is a preparatory phase, followed by a phase on the taking of evidence.

In the preparatory phase, the statement of claim is submitted to the competent court by the claimant. The court then examines the statement of claim within 30 days. Provided the statement of claim satisfies the formal requirements and does not require clarification, the court then serves it on the defendant. Following service, the defendant has 45 days to submit a written defense. If the court deems it
necessary, the parties may exchange a further round of briefs.

A preparatory hearing may be held at the request of one of the parties, or if the court deems it necessary. The purpose of the preparatory phase is to define the scope of the dispute, the facts and the evidence proposed by the parties. No taking of evidence or decisions on the merits happen during this phase. Throughout the litigation, the court informs the parties of their procedural rights and obligations. The court is now also obliged to provide material guidance to the parties to contribute to the efficient conduct of the proceedings, for example, by notifying a party if there is a contradiction in its statements, or if the court interprets the law differently to that party.

The preparatory phase is closed by an order of the court. After this order has been issued, parties are not generally permitted to change their claims, arguments, facts or evidence.

The second phase relates to the taking of evidence. Hungarian law follows a free system of evidence, which means that the parties may freely submit any type of evidence. Parties may also invite the court to summon witnesses, retain an expert or consider an expert opinion. Expert opinions may be given by a private judicial expert appointed by one of the parties, or by a court-appointed judicial expert. In the former case, the expert still has to be impartial and independent and is also obliged to answer the questions and consider the statements of the other party. There is no difference in evidential value between expert opinions made by private and court-appointed experts.

The court will render its final judgment at the end of the evidence phase and may schedule as many hearings as it deems necessary during that phase. In most cases, one to four months elapse between each hearing. On average, cases take between 8 to 25 months in the first instance. However, complex cases which require extensive expert evidence may last even longer.

**Disclosure and discovery**

In principle, each party is responsible for obtaining and disclosing the documents upon which it intends to rely. US-style discovery of documents is not recognized under Hungarian law.

The court may order disclosure of specific documents by the other side or a third party, upon the request of a party to the proceedings. The court will only order disclosure of documents that a party is obliged to disclose under applicable civil law rules (for example, an employer is obliged by the Labor Code to give the employee a copy of their labor contract). Civil law does not have specific rules setting out which documents must be disclosed, so this rule can be difficult to interpret in practice.

Requests for disclosure must be specific and confined to documents necessary to evidence a specific statement made by the disclosing party (e.g. it would be permissible to request disclosure of warehouse records for a specific day, in order to prove the date of delivery claimed by the plaintiff, but it would not be permissible to request disclosure of all the warehouse records on the grounds they might contain evidence relevant to the case).

Requests for disclosure may be rejected for reasons of confidentiality / privilege or because the documents are not relevant to the dispute.

If the party cannot obtain the document because it is in the possession of an official authority, the court is obliged to obtain the document on the party’s behalf.

**Default judgment**

If the defendant fails to submit its written defense within 45 days after receiving the statement of claim (and it has not obtained an extension from the court allowing it to file its written defense at a later date), then the court will issue a default judgment *ex officio*. Note that a placeholder defense which lacks specific arguments, or a statement that generally disputes the claim but does not contain any specific substantial or procedural defense, will not qualify as a formal defense and so will not prevent default judgment being issued.

The default judgment will mirror the statement of claim i.e. the court will grant the remedies requested by the plaintiff.

When issuing a default judgment, the court will not examine the merits, it will only consider whether there are any formal or procedural reasons to reject the claim.

The court serves the default judgment on the defendant, who then has 15 days to object. During this period, the default judgment will be suspended, meaning that it will only become effective and binding if none of the parties object to it within this timeframe. If the defendant wishes to object to the default judgment, it must submit its written defense brief along with its objection, otherwise the objection will be invalid. If a valid objection is filed, the default judgment will not become effective and the case proceeds as normal.
Once a written defense has been submitted, a default judgment may no longer be issued. However, the parties remain obliged to appear in proceedings, and failure to do so is sanctioned as follows:

• where none of the parties appear at the preparatory hearing, the court will terminate the proceedings ex officio; and

• where only one party appears at:
  • a preparatory hearing and that party does not request that the hearing goes ahead without the other party attending, the court will again terminate the proceedings ex officio;
  • any hearing (whether it is during the preparatory or substantive stage of proceedings), then the party that failed to appear is deemed (i) not to object to any statement made at the hearing by the party who was present; and (ii) to have no wish to make any further statements or motions at that point. Note that this is one of the provisions in the new Code of Civil Procedure, which is hard to interpret in practice. An extreme interpretation of the rule would be that, in the absence of the other party, the court would have to accept any statement made by the party which is present, no matter how absurd that statement is. It is also unclear from the new code whether the party that did not attend the hearing is deemed not to contest the statements at the hearing, or not to contest them at all.

**Appeals**

Judgments of the first instance court become final and non-appealable if the parties do not appeal within the required timeframe. Generally such appeal must be brought within 15 days of the judgment being communicated to the parties.

Appeals are typically resolved within 6 to 18 months after the notice of appeal of the first instance judgment is filed.

Second instance judgments are not subject to appeal other than by extraordinary revision.

In addition to the traditional appeal, there are extraordinary remedies, such as motion for retrial and extraordinary revision by the Curia.

A motion for retrial may be filed with the first instance court against a final and binding judgment, where new facts or circumstances are discovered after the judgment. A party to the original proceedings may initiate a retrial only if the newly discovered facts or circumstances would have been to the party’s benefit had they been considered originally. Retrial may be requested within six months, from the day when the judgment became final, or from the day when the new circumstances become known to the party, whichever occurs later. In any event, retrial may not be requested once five years has passed since the judgment became final.

An extraordinary revision is a special appeal against a final and non-appealable second instance judgment, filed with the Curia. This review may be requested within 60 days of service of the second instance judgment. Though such appeals are described as extraordinary, it is not uncommon for parties to turn to the Curia. The Curia’s review has a narrower scope than an appeal, as the Curia will only consider legal issues and will not re-examine the underlying facts and circumstances of the case.

Certain types of cases are generally exempt from referral to the Curia, unless (exceptionally) the Curia deems that the importance of the legal question in issue makes such referral necessary. These cases include: claims below HUF5 million (approximately EUR15,000); decisions concerning child custody, or cases concerning joint ownership of condominiums.

**Interim relief proceedings**

Interim relief is essentially a measure ordered by the court temporarily granting (i) the relief sought by the claimant in its statement of claim, or (ii) a measure aimed at avoiding further damage or preserving the status quo. The exact content of the relief is always determined by the underlying substantive law to be applied in the dispute at hand. Hungarian courts may provide a wide range of interim relief upon a party’s or prospective party’s application. Interim relief applications are common in intellectual property disputes (e.g. applications to temporarily restrain the defendant from using a trademark); and in commercial disputes (e.g. applications to temporarily suspend a payment obligation, when the dispute concerns the validity of such obligation).

Parties or prospective parties can apply for interim relief before and after filing the statement of claim. From a procedural point of view, interim relief may be granted (i) if it is deemed necessary to prevent any imminent threat of damage to the requesting party, or preserve the status quo of the subject of the dispute, or with a view to providing special protection of certain rights; and (ii) if the advantages of granting the relief sought outweigh the disadvantage that may be suffered by the granting of the relief. Additionally, the party or prospective party seeking interim relief is only required to prove that the underlying facts are probable. Evidence is not required at this point. The court may also order the requesting party to provide some security before granting the interim relief.
The court decides on the interim relief request in an expedited procedure, in which the court has to take action within eight days following the receipt of the application. Relief is granted by way of a court order, which may be appealed within 15 days of its communication to the parties.

In Hungary, interim relief cannot be regarded as an ex parte procedure, as the court consults both parties before granting the relief, unless the case is extraordinary. Since the interim relief procedure is part of the litigation and not a separate procedure, the general rules of mandatory legal representation apply here as well (i.e. legal representation is not mandatory before the district court and before the general court on appeal, but in all other cases it is). The period for which the interim relief is ordered is indefinite, but terminates when the first instance judgment becomes final, at the latest. The court, upon request, might withdraw or modify the relief if the underlying facts or circumstances change.

Exceptionally, interim relief may also be requested before filing the statement of claim, if, based on the information provided by the applicant, the court considers it probable that the interim relief has to be ordered immediately, because by the time a claim is filed, it will be too late to protect the rights or interests of the party. Where such early interim relief is ordered, the court sets a deadline no longer than 45 days, within which the statement of claim has to be filed. If the claim is not filed within this timeframe, the interim relief terminates. The request for this early interim relief has to be filed in the court which will have jurisdiction for the litigation as well. This means that if legal representation is mandatory before such a court for the main litigation, then it is mandatory for filing this request too.

Prejudgment attachments and freezing orders

In Hungary, there are no prejudgment attachments or freezing orders available. If the parties wish to secure movable or immovable property in Hungary, they may seek to obtain: (i) a security measure; or (ii) register that there is a pending litigation in the land registry. These measures are not categories of interim relief. They can be distinguished from interim relief measures because: (i) the former are aimed at securing the future satisfaction of a claim, while an interim relief may also serve to prevent further damages, or to preserve the status quo; and (ii) a security measure is ordered in a standalone court procedure, while interim relief measures may be ordered during or in connection with a litigation (including prior to filing a statement of claim).

Security measure

A security measure is an instrument similar to a prejudgment attachment or a freezing order under Hungarian law. A security measure may be requested in two types of cases:

- if the creditor's claim is based on a resolution or judgment, which is not yet enforceable (e.g. the appeal period or the deadline to perform has not lapsed yet); or
- if there is an ongoing litigation or arbitration on the same matter and both:
  - the amount; and
  - the date when the amount will be owed,
    is evidenced with a public deed, or a private deed with full probative effect (private deeds with full probative effect are inter alia deeds where signatures are notarized or endorsed by two witnesses, or if representatives of business associations duly execute them).

In order to request a security measure, the creditor must also demonstrate that the enforcement of its claim post-judgment is in jeopardy.

The purpose of a security measure is to secure the enforcement of claims that meet the above requirements. The security measure can secure a monetary claim, or to the sequestration of specific objects. The measure is enforced by a bailiff. Any object or asset may be subject to a security measure, including movable and immovable assets, or shares.

General jurisdiction rules apply for the security measure as well; meaning that generally the request has to be filed with the court of the debtor's residence. If there is ongoing litigation on the same matter, the same court has jurisdiction over the security measure. However, as the security measure procedure may also be pursued to secure claims in relation to which judgment has already been given but are not enforceable, the security measure may not have to be followed by a decision on merits.

Creditors are generally not liable for any damages the security measure may cause to the debtor. In exceptional circumstances, for example, when a creditor has acted fraudulently or abused a debtor's rights, the creditor may be held liable, but this seldom happens.

Registration of litigation in case of property claims
A special kind of freezing order in Hungarian law is the registration of litigation in the land registry. This measure only applies in the case of immovable property. If the subject of the litigation is the ownership of immovable property, the plaintiff may ask the court to register the litigation on the land registry sheet of the property. Such a measure cannot be requested before filing a statement of claim. The court does not have to notify the defendant about such request and may order the registration of litigation prior to serving the statement of claim on the defendant.

Strictly speaking, this will not result in a freezing order, but after the registration of litigation takes place, all other rights and obligations will only be registered provisionally in the land registry, with their final registration depending on the outcome of the litigation. So, for example, if someone sues for the ownership of a property, and the litigation is registered, the owner may still sell the property during the litigation. However, if the plaintiff wins, the ownership of the buyer will be removed from the land registry.

Plaintiffs are generally not liable for any damages the registration of litigation may cause to the defendant. In exceptional circumstances, for example, when a plaintiff has acted fraudulently or abused a defendant's rights, the court could in theory hold a plaintiff liable for such damages, but we are not aware of any decisions when such liability has been found.

Costs

When filing the statement of claim, the plaintiff must pay a court fee, which is a certain percentage of the claim's value, or a lump sum if the value cannot be determined. The court fee is capped at HUF1.5 million (approximately EUR4,500) in the first instance proceedings, at HUF2.5 million (approximately EUR8,000) in the second instance, and at HUF 4.5 million (approximately EUR14,000) in the Curia's extraordinary revision proceedings. During the proceedings, further court fees may be incurred (e.g. fees of judicial experts, translation costs) that have to be advanced and deposited by the party for whose interest the costs are incurred. Moreover, during the litigation, the parties have to pay their own costs, which are included in the procedural costs.

The court decides on the procedural costs at the end of the proceedings on the basis of the parties' winning/losing ratio. In principle, the losing party bears all the procedural costs, including the costs advanced by the successful party during the course of the proceedings. Legal fees are usually awarded by applying a calculation which progressively follows the case value. In practice this means that, in high-profile cases, lawyers' fees cannot usually be recovered in full by the successful party.

In some cases, irrespective of the outcome of the proceedings, the court may grant some relief from the procedural costs. This may be either due to exceptional personal reasons or the nature of the subject of the proceedings. In these circumstances, the court might relieve the party from the requirement to advance and / or bear any procedural costs, or in the alternative, from advancing and / or bearing court fees.

Class actions

There are three instruments in Hungarian law that can be used for enforcement of collective claims:

- The closest instrument to the class action of common law jurisdictions is what the Code of Civil Procedure calls associated litigation, which, (for the sake of simplicity), we will refer to as class actions. This is a new instrument in Hungarian law, introduced by the new Code of Civil Procedure in 2018 in limited types of cases. Class actions are allowed for consumer, labor and environmental claims.

A class action may be filed by at least ten plaintiffs. The plaintiffs must put in place a contract setting out the terms of their class action, in which, among other things, they have to nominate a representative plaintiff who appears before the court on behalf of all plaintiffs. The claims, allegations, rights violated and underlying facts have to be identical for all plaintiffs. Multiple class actions are allowed on the same subject. After a class action is filed, the court first decides whether the requirements of a class action are met and thus if the class action is allowed. If the decision is positive, then the class action generally follows the same steps as in normal litigation. Once the claim has been filed, it is only possible to join or leave the class action during the preparatory phase and only with the court's permission.

- The Civil Code allows public interest proceedings to be brought to declare standard contractual terms unfair. This may be initiated by the public prosecutor, the government, and certain consumer protection representatives against a company who applied unfair standard terms. The court may declare certain unfair standard contract terms between the company and its consumers null and void. The court's judgment is effective in respect of all consumers who have contracted under the same unfair term with the company. The court might oblige the company to publish a declaration of its unfair practice in one of the public newspapers.
Organizations representing businesses are also provided with the right to launch public interest proceedings in limited circumstances. In public interest proceedings, they may only challenge grossly unfair payment standard terms incorporated into business-to-business contracts.

- The third category is collective redress proceedings. Different sectorial laws give certain government agencies, authorities, the public prosecutor, or NGOs the right to launch collective redress proceedings if they encounter some sort of collective violation in their respective fields. Among others, the Central Bank, the Competition Authority, the Consumer Protection Authority, the Public Utility and Energy Authority and the Equal Treatment Authority have such rights. Collective redress proceedings can either be launched on behalf of aggrieved individuals, for example in consumer protection cases, or in the public interest, for example in environmental or animal welfare cases.

The applicable substantive law will determine what plaintiffs may claim in these collective redress proceedings. For example, if the exact identity of the aggrieved consumers (meaning the exact specific individuals who suffered harm) cannot be defined, the Consumer Protection Authority or the Competition Authority may only request the court to declare a violation. However, when the specific individuals who suffered harm are defined, these authorities may also sue for damages on behalf of the aggrieved consumers.

**Key contacts**

Andras Nemescsoi  
Partner  
DLA Piper Posztl, Nemescsői, Györfi-Tóth and Partners*  
andras.nemescsoi@dlapiper.com  
T: +36 1 510 1100
Overview of court system

Italy’s legal system follows the civil law tradition, where codified statutes are of primary importance. The Italian civil court system is organized into a three-tier structure:

- Courts of First Instance;
- Courts of Appeal; and
- the Supreme Court.

Rules on jurisdiction are set out in the Italian Code of Civil Procedure. These rules determine which Court of First Instance a particular case should be filed in. Territorial jurisdiction of the Courts of Appeal depends on the location of the Court of First Instance that issued the decision to be appealed.

Limitation

As a general rule, contract claims are subject to a ten-year limitation period, beginning on the date on which the rights under the contract could have been enforced. For tort claims, this term is five years from the date when the event giving rise to the tort claim occurred.

Procedural steps and timing

Legal representation for civil proceedings is mandatory except for disputes:

- for which the giudice di pace is competent. The giudice di pace is a judge of first instance who is competent for disputes below a given (low) value and / or disputes concerning specific subject matters; and

- where the amount in dispute either (i) does not exceed EUR1,100; or (ii) exceeds EUR1,100 but the giudice di pace, in light of the nature and amount of the dispute, expressly authorizes that a party does not need to be represented by an attorney.

Writ of summons

In Italy, civil proceedings are commenced when the claimant serves a writ of summons, through the use of a bailiff, on the defendant.

The writ will summon the defendant to appear at the hearing on the date indicated by the claimant in the writ itself. The writ shall also contain the following information:

- details of the court before which the claim is filed;
- all the relevant information required to identify the plaintiff and the defendant;
- the object of the claim;
• the description of the factual and legal grounds of the claim and the relative conclusions;

• a specific indication of the evidence which the plaintiff intends to offer or request in the proceedings (for example, a party may request that witnesses are heard on specific topics or an expert is appointed by the court) and, in particular, an indication of the documents which the plaintiff exhibits with the writ of summons;

• the name and last name of the lawyer(s) and the power of attorney;

• an invitation to the defendant to file its statement of defense and to appear at the hearing, with the warning that, where the defendant intends to: (i) raise a counterclaim; (ii) join a third party to the proceedings; or (iii) raise objections based on procedural deficiencies or merit that the judge cannot raise ex officio, it must file its statement of defense at least 20 days before the date of the first hearing. Conversely, where the defendant does not wish to pursue (i) to (iii) above, it may file the statement of defense directly at the first hearing.

The first hearing

Between the date of the first hearing and the date of the service of the writ of summons on the defendant, there must be a term of at least 90 days (if the place of service is in Italy) or 150 days (if the place of service is abroad). When setting the date of the first hearing, the claimant must ensure it complies with these terms. Otherwise, the court shall declare the writ of summons null and void. Although the claimant schedules the first hearing, and indicates the date in the writ of summons, the judge may postpone the date of the hearing ex officio depending on their backlog and / or calendar. The postponement should not exceed 45 days compared to the date scheduled by the claimant. These terms are not always respected and it is likely that the postponement is longer than 45 days.

The first hearing is used to verify the preliminary procedural issues, such as the successful service of the writ of summons on all parties and the capacity of the claimant to bring the claim. The judge may also use this as an opportunity to explore the possibility of an amicable settlement between the parties.

After the first hearing and at any of the parties' request, the judge will grant the parties three consecutive terms (a first term of 30 days from the date of the first hearing or any subsequent date that the judge deems appropriate, then a term of a further 30 days and a last term of 20 days), identical for both parties, to simultaneously: (i) file supplemental written submissions particularizing or modifying the prayers for relief and the objections outlined in the writ of summons and / or in the statements of defense; and (ii) supplement the evidence requests that they made, respectively, in the writ of summons and in the statement of defense.

Once these three further submissions have been made, two different scenarios can be envisaged. The first of these is that, if the judge deems the dispute ready to be decided, the hearing for the submission of the parties’ final prayers for relief is immediately scheduled. Alternatively, if the judge does not deem the dispute ready to be decided, a hearing is scheduled to decide on the acceptance or dismissal of the evidence requested by the parties. The judge will decide on these issues at the hearing and then the evidence-taking phase begins.

The taking of evidence

Where the judge does not deem the dispute ready to be decided, the judge establishes the timing, place and method of the taking of evidence. For example, if witness testimony is admitted, the judge will schedule a hearing for the witness(es) to render their testimony. If the taking of evidence should be accomplished outside the court's district, the judge delegates a judge in the relevant location, unless the parties jointly request, and the president of the tribunal agrees, that the judge shall move to that location for accomplishing the taking of the evidence. This is seldom the case.

The judge taking the evidence decides (by issuing the relevant order) all the issues that arise during the evidence-taking phase. The taking of evidence is recorded into minutes, drafted under the judge's supervision.

Once the evidence-taking phase is concluded, the hearing for the parties to submit their final prayers for relief will be scheduled.

The final hearing

The hearing for the parties to submit their final prayers for relief will usually take place between one and two years after the decision of the judge that the dispute is ready to be decided or after conclusion of the evidence-taking phase. The parties are then given 60 days (or a shorter period that should not be shorter than 20 days) from the date of the hearing to file their conclusive briefs and a further 20 days for the reply briefs.

The judge's decision is issued approximately five months after the date on which the parties file their reply briefs. The decision is
temporarily enforceable, notwithstanding any appeal. The appeal judge may stay in whole or in part the enforceability or the execution of the challenged judgment, with or without a bond. However, the judge may only grant a stay upon receipt of a motion filed by one of the parties with the main appeal or with the incident appeal, when there are serious and well-grounded reasons to do so and also with reference to the possibility that one of the parties may become insolvent.

The average length of first instance proceedings is approximately 36 months.

**Debt collection**

In addition to ordinary proceedings, there is a simplified judicial procedure mainly aimed at commercial debt collection. Such debt collection is obtained through the issuance of a payment injunction (Decreto Ingiuntivo) by the competent court. The procedure applies to debts which are:

- quantified in their amounts;
- due and payable (i.e. liquidi and esigibili); and
- supported by written evidence.

As part of this simplified judicial procedure, the judge normally proceeds, without the knowledge of the alleged debtor, to a brief assessment of the documentation filed. Where the legal requirements referred to above are met, the judge will issue an order for payment which becomes enforceable if the debtor fails to oppose it within 40 days (where the debtor is situated in Italy) from receipt of service of a certified copy of the order (or 50 days where the debtor has its registered office elsewhere in the EU and 60 days in all other cases). If the debtor serves the creditor with an opposition in the form of an ordinary writ of summons with the specific indication that it is aimed at opposing the order, the proceedings will follow the ordinary procedural steps and timings referred to earlier in this section. Even where an opposition is served, provisional enforcement of the judgment may be granted if certain legal requirements are met.

**Disclosure and discovery**

There is no obligation of discovery set forth in Italian law. This means that the parties are not obliged to share relevant documents, unless an order to this effect is issued by a judge. Such orders can only be made when another party specifically requests a document to be disclosed and the judge deems such a disclosure necessary. No such order can be issued by the court on its own initiative.

An interested party wishing to request the disclosure of specific documents must file the request within the three consecutive terms set by the judge to file supplemental written submissions and evidence requests (namely, a first term of 30 days from the date of the first hearing or any subsequent date that the judge deems appropriate, then a term of a further 30 days and a last term of 20 days). Each document request should:

- specifically identify the document(s) requested;
- prove that the party making the request has no access to the requested document(s) and that there are no other possible ways to get access to it; and
- explain why that document is relevant and material to the case.

A party receiving a document request is not obliged to disclose the document requested. In practice, disclosures only occur when the documents requested do not harm the disclosing party's case.

**Default judgment**

If the defendant does not appear before the court at the date set in the writ of summons or at the date otherwise specified by the judge, the court will verify whether the claim was properly served. If proper service can be established, the judge will declare the defendant's contumacy (i.e. the defendant's failure to appear to contest an action). Despite the defendant's contumacy and lack of participation in the proceedings, the claimant is still required to prove its case. A judge will thus assess the merits of the claimant's claim and issue a judgment if the claimant discharges its burden of proof. The judgment will then be served on the defendant, who can appeal it according to the general rules governing appeals.

**Appeals**
An appeal must be filed within six months from the date on which the judgment is published (i.e. filed at the registrar’s office of the rendering judge) or, if a certified copy of the judgment is served at the request of a party, within 30 days from the date of service. Where a judgment is appealed, the case will be revisited by the Court of Appeal. The parties are not allowed to introduce new claims and further evidence is either not admissible or is admissible only to a very limited extent.

The timeframe for the Court of Appeal to decide on an appeal varies depending on the district. Usually larger districts (such as Rome and Milan) take longer. On average, it takes the Court of Appeal no less than 36 months from the date of the first instance court judgment to give its decision.

A Court of Appeal decision can be challenged before the Supreme Court, but only on grounds of law (whether substantive or procedural). The timeframe for appealing a Court of Appeal decision is:

- six months from the date on which the appellate judgment is published (i.e. filed at the registrar’s office of the rendering judge); or
- if a certified copy of the judgment is served at the request of a party, within 60 days from the date of service.

In principle, the Supreme Court does not review the decision on its factual grounds.

The timeframe for the Supreme Court (Court of Cassation) to decide on an appeal ranges between 36 and 48 months.

**Interim relief proceedings**

Italian law provides for, and clearly defines, different kinds of interim measures. They include:

- protective measures, which are sought pre-action, and are temporary in nature in that they will need to be confirmed or revoked by the final judgment; and
- anticipatory measures, which remain effective even if they are not followed by an action on the merits.

Parties may seek interim relief measures both during the proceedings and before their commencement. Where a protective interim relief measure is granted before the commencement of the proceedings, the claimant must commence an action on the merits within the timeframe set by the judge, which shall not exceed 60 days after the adoption of the interim measure. Otherwise, the interim measure becomes ineffective.

An interim measure may be granted after a brief and concise evaluation of the case, which takes place during a hearing to which both parties are invited to participate. Generally, an interim measure will be granted where the claimant proves the presence of the following two conditions:

- the *fumus boni iuris*, that is a *prima facie* case of the right claimed; and
- the *periculum in mora*, that is a well-founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

In some cases, the court may provisionally decide on interim relief requests without holding any hearing and therefore without involving the defendant (i.e. *ex parte*). In these cases, the courts would then re-establish the necessary dialogue (and due process) with both parties in a second phase after the interim measure is rendered. In this second phase, a hearing shall be scheduled within 15 days after the order whereby the interim measure is issued and the claimant shall be granted with no more than 8 days for the service upon the defendant of the request and of the order of appearance. These terms are triplicated in cases where service shall be made abroad. Once the other party is involved and heard, the measure can be either: (i) confirmed; (ii) modified; or (iii) revoked.

The duration of interim relief proceedings varies depending on the measure requested and on the specificities of each case. The timeframe can range from approximately one month to a year and a half. However, where the proceedings are *ex parte*, the judge may take just a couple of days to order the relief.

The order granted pursuant to an interim relief application can be appealed within 15 days from: (i) the date of the hearing at which the order was rendered; or (ii) when the order was communicated or served to the party, whichever comes first.

No other quick (informal) ways to obtain an interim relief judgment exist in Italy. Parties must be represented by an attorney during such proceedings.

The Italian Code of Civil Procedure lists three typical and one general interim measure. The three typical interim measures are:
• Seizure (sequestro). This normally will involve either:
  • a judicial attachment which may be used on (i) movable or immovable assets when the relevant ownership is in dispute; or (ii) documents (a) from which evidentiary elements can be taken; (b) when the right of exhibiting them is controverted; and (c) it is necessary to temporarily store them – Sequestro Giudiziario; or
  • a preservation order might be issued on any asset of the debtor in order to preserve it, in the circumstances where there are sound reasons to believe that the debtor might deplete such assets at the creditor’s detriment – Sequestro Conservativo. Further details on seizure are set out in Prejudgment attachments and freezing orders;

  • denouncement of new work and feared damages. As to the former, a party who has a grounded reason to fear that its ownership, rights in rem or possession over land will suffer an imminent damage as a result of new work commenced by someone else can denounce such new work and ask the court to issue an order preventing the work from continuing or otherwise addressing the applicant’s concerns. Equally, when the grounded reason to fear imminent damage is due to a building, tree or other dominant item, the applicant may request the court to grant an order that seeks to eliminate the risk of such damage;

  • measures of preventive investigation. These are measures that can be ordered by the court prior to the commencement of the main proceeding. They aim at securing evidence in advance, thereby avoiding the risk of such evidence becoming unavailable subsequently. Usual preventive investigation measures include: (i) examination of witnesses, when there are grounds to believe that such witnesses will not be available at the hearing due to a terminal illness; (ii) inspection of objects or places; and (iii) technical examination.

The two most commonly used are: seizure, and the procedures of preventive investigation.

If a situation cannot be remedied by typical interim measures provided for by law, it is possible to ask for a general remedy (art. 700 Italian Code of Civil Procedure). The party wishing to apply for such a general remedy has to follow the same procedure and satisfy the same requirements as per a typical interim relief measure. The content of such a general remedy is established by the court on a case-by-case basis according to the precautionary need which must be met.

Prejudgment attachments and freezing orders

In Italy there are no prejudgment attachments or freezing orders. However, some interim measures, such as seizure (sequestro) (also referred to in Interim relief proceedings), have the same effect as a prejudgment attachment or freezing order and prevent a defendant from dealing with the assets seized.

In order for a seizure to be granted, the applicant will need to prove the same requirements as those that need to be proved for the granting of all the other interim measures, namely:

  • the fumus boni iuris, that is a prima facie case of the right claimed; and
  • the periculum in mora, that is a well-founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

As with all other interim measures, the request is to be filed:

  • before ordinary proceedings have started, in front of the judge that would be competent for the ordinary proceedings. If a foreign judge would be competent for the ordinary proceedings, the request is to be filed in front of the judge in the place where the measure is to be enforced;
  • pending the ordinary proceedings, in front of the judge that is in charge of the ordinary proceeding.

As with all other interim measures, the seizure can be granted ex parte whenever participation by the other party in the hearing would endanger the positive outcome of the measure. In such circumstances, a hearing must be scheduled no later than 15 days after the measure is granted and, at the hearing, the measure can be confirmed, amended or revoked.

Assets that can be seized include movable and immovable assets and claims on third parties, with the exception of all those goods whose seizure is forbidden by the law (e.g. furniture that is necessary for the debtor and the debtor’s family to live).

As with all other interim measures, the judge granting the seizure shall set a timeframe, which will not be longer than 60 days, within which a claim on the merits shall be commenced. Where the timeframe is not adhered to, the interim measure will become ineffective.

There is no specific provision that sets out the liability of a creditor for the damage it has caused to the debtor by an interim measure.
However, the general rule regarding responsibility for causing losses to third parties contained in Article 96 of the Italian Code of Civil Procedure may apply. Therefore, if the party that requested the seizure loses the merit phase of the proceedings and it turns out that it acted in bad faith or with gross negligence, it may be held responsible for all the damages caused to the counterparty. Moreover, a creditor may be held responsible for any damages caused to the debtor by the seizure if: (i) it is later found that the right for which the seizure was granted does not exist; and (ii) the creditor acted without the necessary diligence.

In addition to seizures and other interim measures having similar effect, within ordinary proceedings and at the request of a party, a judge can order the payment of sums or the delivery of assets before the end of the proceedings. Such order can be made when: (i) the sums are not disputed by the parties; (ii) the conditions required for a seizure referred to above are met; or (iii) at the end of the evidence phase the judge deems that the claimant's right to payment or the delivery of assets has been proven. The purpose of such orders is to enable enforceable decisions on certain matters to be made in a shorter time than the judge may need to reach a final decision. These orders allow the party to commence an enforcement procedure, in line with normal enforcement proceedings.

**Costs**

Generally, the unsuccessful party is ordered to pay the other party's legal costs (including the attorney's fees). The amount to be paid is decided by the court and usually represents only a portion of the legal costs actually incurred.

If the losing party has commenced or carried out civil proceedings in gross negligence or in bad faith, the successful party can claim damages caused by the counterparty's behavior (art. 96 Italian Code of Civil Procedure).

As a general rule, Italian law does not provide for punitive damages.

Court fees vary depending on the amount in dispute and the stage of the proceedings (i.e. first instance, appeal or appeal to the Supreme Court Cassazione). They range from approximately EUR40 to EUR4,000.

**Class actions**

The following three kinds of rights can be protected through a class action:

- contractual rights of a group of consumers or end-users that are all in the same position with a given company;
- similar rights that end-users of a given product or service have with a given manufacturer, even in the absence of a direct contractual relationship; and
- similar rights to restoration of losses suffered by consumers and end-users due to wrong commercial practices or anticompetitive practices.

In Italy, class actions work as an opt-in system. This means that a consumer or an end-user can decide to become a member of the class group without being represented by a lawyer. By becoming a member to the class action, the single consumer waives any right they may have in respect of an individual action against that same respondent.

**Key contacts**

**Stefano Modenesi**
Partner
DLA Piper Studio Legale Tributario
Associato
stefano.modenesi@dlapiper.com
T: +39 02 80 618 1
Overview of court system

Japan is primarily a civil law country, where codified laws predominate. However, case law offers non-binding guidance that may, in some cases, be persuasive, and may be relied upon providing it does not conflict with the codified laws.

The Supreme Court, the highest court in Japan, exercises final appellate jurisdiction within Japan's judicial system. The Supreme Court has jurisdiction to hear cases involving:

- violations of the Constitution;
- serious procedural breaches by the lower courts; and
- important issues concerning the construction of laws and regulations.

Decisions in the Supreme Court are made either by the grand bench, composed of the entire body of 15 justices sitting together, or by one of the three petty benches, composed of five justices each.

There are eight high courts in Japan, each with territorial jurisdiction over one of eight regions of Japan. The eight high courts are located in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu. High courts generally have appellate jurisdiction over judgments rendered by district courts and family courts, as well original jurisdiction for certain criminal matters. Typically, a case heard by the high court will be adjudicated by a panel of three judges. The Intellectual Property High Court is located in Tokyo and was established in April 2005 to handle cases relating to intellectual property, such as appeals from district courts in civil cases relating to patent rights and actions against decisions made by the Japan Patent Office.

There are 50 district courts in Japan, each with territorial jurisdiction over a single prefecture – with the noted exception of Hokkaido Prefecture, which is divided into four districts. These district courts are separated into branches, and there are 203 branches in total. The district court will generally be the court of first instance for civil and criminal matters, and also serves as the appellate court for judgments arising from summary courts. Cases heard in the first instance in district courts are adjudicated by either one or three judges, and appeals from summary courts are heard by three-judge panels.

There are 438 summary courts throughout the country. The summary courts have jurisdiction over civil cases involving claims for amounts of up to JPY1.4 million (c. EUR11,000) and certain criminal cases. Summary court cases are adjudicated by a single summary court judge.

Limitation

Under Japanese law, the general statute of limitations period for civil claims is ten years.

Procedural steps and timing

A civil claim is commenced by a claimant filing a petition together with supporting evidence. A petition must specify the parties and contain particulars of the claim, as well as a statement specifying the relief sought. Revenue stamps of a certain value must be affixed to the petition as a filing fee. Once a petition and a writ of summons are served on the defendant, the defendant is required to file a written
answer within the period stipulated by the court, which is commonly 40 to 50 days. A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a claim without appointing an attorney.

Thereafter, several preparatory proceedings will be held in order to clarify core issues in the case and both parties will submit documentary evidence to the court and make oral arguments. Court hearings in a case are usually held every one or two months. Witnesses are generally examined after the parties have submitted documentary evidence and made oral arguments. Once all of the evidence has been examined, a judgment will generally be rendered within two months. In first instance cases, judgment is typically given within less than twelve months from the petition being filed.

Labor, or employment, cases are another important type of legal dispute. There are two basic types: individual employment cases, which are between an employer and an employee, and collective employment cases, which are between an employer and a union. In April 2006, Japan introduced the Labour Adjudication System for individual employment cases. Under this system, three adjudicators (one serving as judge and one each representing the interests of the employer and the employee respectively) form a Labour Adjudication Committee that endeavors to resolve the dispute in no more than three sessions by providing mediation or adjudication. The objective of this system is to resolve cases quickly, appropriately and effectively. Cases which are not resolved under this system are referred to ordinary judicial proceedings.

Disclosure and discovery

In Japan, the parties are free to determine which evidence they want to rely on in proceedings. In limited cases, Japanese courts have authority to order parties to disclose documents based on their relevance to the case. Parties seeking an order for disclosure must specify:

- the description of the documents;
- the name of the individual believed to hold relevant documents;
- the summary of the documents;
- the matters to be proved by such documents; and
- the legal basis to request the disclosure.

US-style discovery proceedings do not exist in Japan and, therefore, the ability to obtain potentially beneficial evidence from an uncooperative opposing party is generally limited. Fishing expeditions are prohibited.

Default judgment

If the defendant neither appears at the first hearing nor files a written answer at court, the claimant's claim will be accepted by the court and a default judgment could be rendered. The defendant may appeal against a default judgment.

Appeals

A party dissatisfied with a judgment at first instance may file an appeal by submitting a petition of appeal within two weeks of receipt of the judgment from the court of first instance. An appellant is required to file detailed grounds of the appeal within 50 days after filing a petition of appeal if such grounds are not provided in the petition. The respondent must file an answer by the date stipulated by the court, which is usually one to two weeks before the court hearing. Although there is no statutory limit on the number of court hearings that may be held on appeal, usually only one or two hearings are held. A party may be allowed to submit supplemental written submissions. It typically takes between 6 and 12 months from submitting the petition of appeal to a final decision, but the process may take longer than 12 months in complex cases.

A party dissatisfied with a judgment of a court of second instance may file an appeal to the Supreme Court, but only if: (i) it is alleged that the second instance judgment violates the Constitution; or (ii) even where no violation of the Constitution is alleged, the judgment involves material matters concerning the interpretation of laws and regulations. In these cases, a party may file a petition for leave to appeal to the Supreme Court within two weeks of the second instance judgment being handed down. This petition for leave to appeal invites the Supreme Court to exercise its discretion to accept the final appeal. In the event that the Supreme Court agrees to hear the appeal, it typically takes between four and six months for the final judgment to be given. It tends to take longer when the Supreme Court overturns decisions by the lower courts.
A judgment becomes final and binding once it cannot be further appealed. Parties may not dispute the contents of final and binding judgments unless certain exceptional circumstances exist.

**Interim relief proceedings**

Japanese courts can grant interim (or provisional) relief to protect property and secure the enforceability of the judgment. The following forms of interim relief are available in Japan:

- an order of provisional attachment available to potential plaintiffs (creditors) who wish to freeze the potential defendant’s (debtor’s) assets to secure collection of their monetary claims;
- a provisional order (referred to in Japan as provisional disposition), which is used to preserve disputed property in certain types of non-monetary claims; and
- a provisional disposition to establish an interim legal relationship between the parties to avoid substantial detriment or imminent danger caused by the disputed relationship.

Further detail on the first two types of interim relief can be found in [Prejudgment attachments and freezing orders](#).

In relation to the provisional disposition to establish an interim legal relationship, an obligee wishing to clarify a legal relationship with an obligor can file a petition with the district court which has either (i) jurisdiction over the merits of the case; or (ii) jurisdiction over the location of the disputed subject matter. An obligee can request this measure until a judgment on the merits has become final and binding (i.e. an obligee is able to request provisional relief even in second instance). A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a petition for provisional relief without appointing an attorney.

As to the criteria to obtain such provisional disposition, in order to be successful, the applicant must establish that there is a *prima facie* case that (i) the disputed legal relationship exists; and (ii) an order is required to avoid substantial detriment or imminent danger to the petitioner. Before granting this type of relief, the court will usually convene a hearing to hear both parties' positions.

The timeframe to resolve applications to determine a provisional legal status is generally between one and four weeks from the application being filed to the remedy being awarded. An obligee may file an appeal against a judicial decision to dismiss a petition for an order for a provisional relief within an unextendable period of two weeks from the day on which the obligee was notified of such decision. Where the court dismisses the appeal for provisional relief, no further appeal may be filed against such judicial decision. On the other hand, where the court issues an order for provisional relief, the obligor may (at any time) file an objection to the order with the court which issued the order.

In addition to the above interim relief measures, in some cases, it is also possible to obtain an interim judgment, which will settle certain matters that are ripe for determination before the final judgment. An interim judgment will be binding on the court that issued it, but it will not be appealable or enforceable by the parties. Japanese law does not establish a procedure for obtaining such judgment. Japanese courts can, in their discretion, issue an interim judgment on part of the dispute before rendering a final judgment providing both of the following conditions are satisfied: (i) the element of the dispute subject to the interim judgment is independent from the main matter in dispute, and (ii) it is feasible to give judgment on that element. In addition, the interim judgment is also available when issues of liability and quantum can be determined separately, and the court considers that liability should be determined first. An interim judgment can be useful, particularly in large or complex disputes, to reduce the number of issues in dispute in subsequent proceedings. However, in practice, interim judgments are rare.

**Prejudgment attachments and freezing orders**

As noted in [Interim relief proceedings](#), plaintiffs wishing to secure assets may apply for the following types of provisional remedies by filing a petition at the district courts:

- in respect of monetary claims, a provisional attachment order, which will freeze the debtor’s assets including immovable and movable assets, bank accounts, shares and monetary claims to third parties in order to secure collection of the monetary claim; or
- in respect of non-monetary claims, a provisional disposition order to prevent a debtor from disposing of a property the subject of the dispute to any third party.

The procedure for these civil provisional remedies is generally *ex parte*.
The courts will only award these provisional remedies where the creditor can substantiate an underlying claim and demonstrate that there is an imminent risk that an eventual judgment would become impossible to enforce without provisional protection. It takes only a few days from the application being filed to the remedy being awarded. The provisional remedy is revocable by the court if: (i) the creditor does not file a substantive claim within the period stipulated in the court order made in response to the provisional remedy application (the minimum period which will be stipulated is two weeks); or (ii) a creditor's claim is rejected in the final judgment by the courts. A creditor may be liable for damages suffered by an obligor as a result of the application of provisional remedies.

Civil execution is a procedure by which an obligee may compel an obligor's payment of a debt by seizure and sale of the obligor's property. For instance, if a debtor fails to make a monetary payment due under a contract, the creditor (based upon a claim that has been affirmed by a judgment or a judicial settlement) may be granted the right to seize the debtor's property, sell it by auction, and distribute the proceeds in satisfaction of the claim.

Costs

In litigation, court costs comprise:

- court fees (calculated by reference to the sums claimed and paid by the claimant at the time of filing, e.g. the fee payable in a claim worth JPY10 million (c. EUR79,000) would be JPY50,000 (c. EUR400));
- experts' fees; and
- costs of other services required for the court proceedings.

As a general rule, the losing party will be ordered to bear these court costs at the time of judgment. However, in cases where the claimant is successful on only part of its claim, costs will be apportioned between the parties by reference to the outcome. A court may order all successful parties to pay a certain amounts of costs in the interests of fairness. Moreover, lawyers' fees are not included in court costs; legal fees are merely regarded as one element of the damages to be claimed. In most cases, the amount of legal fees that can be claimed is limited to a maximum of 10% of the total damages awarded and is payable in addition to those damages.

Class actions

There is no litigation structure similar to a class action in Japan.

However, the Act on Special Provisions of Civil Court Procedures for Collective Recovery of Property Damage of Consumers enables consumers to recover damages collectively, in a simple and prompt manner. Claims brought under the Act must arise out of a contract concluded between a consumer and a business operator and in such claims, consumers are not able to claim certain losses, such as secondary losses, losses arising out of lost earnings, damages for personal injury / death, or damages for pain and suffering.

Key contacts

Kevin Chan
Partner, Head of Litigation and Regulatory, Asia
DLA Piper Hong Kong
kevin.chan@dlapiper.com
T: +852 2103 0823
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 choses 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, disclosure 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.

Key contacts

Henry Quinlan
Partner, Head of Litigation and Regulatory, Middle East
DLA Piper Middle East LLP
henry.quinlan@dlapiper.com
T: +971 4 438 6350
Mexico

Last modified 19 July 2019

Overview of court system

Mexico has a civil law legal system. It has federal, as well as local laws for each of the 32 states. Federal laws are applicable to all of the states, while local laws are limited to the state that enacted them. Courts are divided into Federal and State Courts:

- the Federal judicial system includes:
  - District Courts;
  - Unitary Circuit Courts each with one magistrate;
  - Collegiate Circuit Courts each with three magistrates; and
  - the Supreme Court of Justice with eleven Justices.; and
- the State (i.e. local) judicial system generally includes:
  - Peace Courts;
  - local Judges of First Instance;
  - local Courts of Appeal that serve as second instance courts, each consisting of three judges; and
  - a Superior Court of Justice for each state.

The state judiciary is organized according to the Constitution of the respective state.

A contractual choice of jurisdiction in favor of a foreign court will be recognized by the Mexican courts, except where statute mandates the matter be heard in the courts of Mexico.

Limitation

Under Mexican law, the statutory limitation for civil claims is ten years from the date an obligation may be enforced.

Procedural steps and timing

The process of litigation is almost the same across state and federal courts. Representation by a lawyer is not mandatory; lawsuits can be filed directly by the claimant. Proceedings are started (the introductory stage) when the plaintiff files a claim in the relevant court. The defendant then has 5 to 15 days to file the defense and, if appropriate, a counterclaim.

The next stage is the evidentiary stage, once parties have been notified of the commencement of this stage, they have ten days (starting from the day after such notification) to propose evidence. The court has discretion to admit the evidence offered by the parties. If the court allows it, evidence is submitted by the parties. The submission of evidence may take place over the course of several hearings, depending on the circumstances of the case.

The third stage is the conclusive stage in which the parties submit their written closing arguments.
After the conclusion of closing arguments, and generally within a ten-working-day period, the court must issue a judgment which resolves the case at first instance. The duration of the first instance may vary depending on the complexity of the case. A straightforward civil lawsuit may last from one to two years.

**Disclosure and discovery**

Mexico does not provide for discovery in the same manner as common law jurisdictions. Evidence production operates on the principle that each party must present the judge with all evidence upon which they rely on to support their allegations.

The judge, however, has the authority to:

- order the production of evidence at any time, if such evidence is regarded as essential in order to draw a conclusion on the content of the dispute;
- call on any party to the proceedings or any third party,
- consider any object or document belonging to the parties to the dispute or to third parties, in order to learn the truth, as long as the evidence in question is recognized by law and relates directly to the disputed facts.

A judge may also repeat or extend the evidentiary phase, as required at their discretion.

If either party objects to the inspection or production ordered by a judge, or refuses to answer questions during their testimony, or refuses to produce the object or document requested, the judge has the power to infer that the counterparty's allegations are true.

**Default judgment**

In the event that a defendant does not appear and hence does not take part in the proceedings, the trial will continue without the defendant's presence (*juicio en rebeldía*). The party that did not appear during the proceedings has the option to object the default judgment in an appeal.

**Appeals**

Except for low value claims (the relevant threshold changes annually), upon notification of a first instance judgment, a party may appeal it to the relevant second instance court within 9 to 12 working days. The appeal must be filed in writing before the court of first instance, which will later transfer the case to the superior court. The superior court will then render a decision confirming, revoking or modifying the first instance ruling. The appeal procedure comprises an evidentiary stage, a stage for written pleadings and a hearing. Afterwards, the parties are summoned by the court to listen to the ruling.

The evidentiary stage at second instance is only allowed:

- when the parties did not produce any evidence in the first instance proceeding for reasons beyond their control;
- when exceptional circumstances arose after the merits hearing;
- when an applicable law or statute were not known by the parties.

In the event that these exceptional circumstances do not apply, the judge would assess the facts as they were presented at first instance.

The general timeline for the different stages of appeal is as follows: the appealing party initiates the appeal by filing a request containing the alleged offenses caused to such party by the first instance judgment (appeal request) before the judge of first instance within nine days after the judgment is issued. The judge will then review the appeal request and provide six days to the other party to respond (response to appeal). The judge of first instance will proceed to authorize or deny the appeal within five days and, if the appeal is authorized, will transfer the appeal file to the judge of second instance. The judge of second instance will review the file and summon the parties to the final hearing within 20 days of receipt of that file. The judge's final decision will be rendered in the final hearing.

Evidence is only allowed in the second instance in specified circumstances. Where it is allowed, the parties will have ten days to reproduce all the evidence and the final hearing takes place ten days after this stage.

Judgments in respect of low value claims and judgments issued by the second instance court on civil and commercial matters cannot be
appealed except through a constitutional remedy (amparo) filed before a federal collegiate court. This route of appeal is only available where a party argues its constitutional rights have been violated. The constitutional remedy is a unique feature of Mexican law and may act as a last recourse in court actions when a violation to a party's constitutional rights occurs during the proceedings, or results from the decision itself. This latter type of amparo is known as amparo directo, and is filed before the court that issued the decision, and transferred to the Collegiate Circuit Courts.

Each of these appeal proceedings (amparo and amparo directo) last, on average, between four to six months. Having said that, in some instances, particularly where the cases are of extreme complexity or involve voluminous evidence, this time frame may be extended.

Interim relief proceedings

In Mexico, interim relief may be granted by judges before or during the course of the main litigation. Interim relief orders are provisional in nature and are granted where a quick decision is needed to deal with, for example, an imminent risk of dissipation of assets. In order to obtain personal relief there needs to be reason to believe, for example, that the person involved in the dispute may disappear or avoid being summoned to court. In cases related to property, the court may require assets to be deposited in order preserve them and ensure payment upon a favorable result of the dispute for the plaintiff.

Upon receiving an application for interim relief, the judge hearing the application will issue an order granting or refusing the requested relief within a period of one to four days. The interested party may appeal the relief order within six days after such order is notified to it. There is no specific legislation requiring mandatory representation by an attorney, but it is a common practice to appoint attorneys.

Prejudgment attachments and freezing orders

Precautionary measures (providencias precautorias) are categories of interim relief that allow for the withholding of any movable and immovable assets owned by the adverse party if:

- there is a well-founded risk that the assets that have been consigned as collateral or the assets upon which a proprietary action is going to be exercised will be disposed of, concealed, dilapidated, alienated or insufficient; and
- in the case of personal actions, the value of the debtor's assets does not exceed the value of the creditor's claim for attachment, and there is a well-founded risk of the disposal, concealment, dilapidation or alienation of such assets.

Where the assets in question consist of cash or cash deposits in credit institutions, or other replaceable goods, it shall be presumed that there is a risk that they may be or will be disposed of, hidden or dilapidated, except where the defendant guarantees the amount of the debt.

Precautionary measures are granted to protect the plaintiff's interests, where no alternative remedy would achieve the same result. The measures only stay in place until an enforceable judgment has been obtained and they can be converted into a legal seizure.

Prejudgment attachments should always be followed by a claim on the merits. Such claim must be brought within three to five days of the grant of the prejudgment attachment.

Precautionary measures may be granted by the court, both before trial, or after delivering any interlocutory judgments. Where they are issued before trial, the ruling may be issued ex parte (i.e. without summoning the person against whom the measures are sought), as long as the above requirements have been met.

The creditor can be liable for any damages caused to the debtor by the attachment. The judge will typically order the requesting party to exhibit a sufficient guarantee covering any such damages prior to issuing the attachment order.

Costs

The Mexican Constitution provides that all courts must administer justice for free. In commercial matters, the parties do not bear any court fees. Equally, parties are not responsible for the expenses incurred by factual witnesses. If a party offers an expert witness, the offering party shall bear its fees. If the judge requests an additional expert witness, its fees are equally divided between the parties.

Litigation costs in Mexico will mainly include (i) legal fees; (ii) translator fees; and (iii) day-to-day administrative expenses. Such litigation costs are allocated in the judgment. The allocation of costs will depend on whether the claim specifies the quantum in dispute:
where the amount is specified by the claimant (e.g. a monetary claim for damages), the court will attribute between 6% to 8% of such amount to costs to be paid by the unsuccessful party;

where the claim (and subsequent judgment) does not have a specific amount (e.g. order for specific performance, injunctive relief), the court will order the unsuccessful party to pay a set fee, which will depend on the number of pages filed during the proceeding.

It is uncommon for the first instance judge to order one party to pay litigation costs. In most cases, litigation costs are allocated and ordered by the second instance courts.

If a party acts in bad faith, tries to delay or delays the proceedings on purpose, the judge may take this into account and order payment of a higher percentage of costs and legal fees incurred by the other party. There is no interest awarded on costs.

Class actions

Class actions are recognized in the Mexican Constitution as collective actions. Federal courts have exclusive jurisdiction over collective actions and they may be filed in relation to consumer goods and services, financial services, environmental damage and harm caused to consumers by anti-trust practices. Collective actions require that the class is comprised of at least 30 members and the existence of a common legal cause of action within the class. The resolution of the collective action aims to benefit all members of the class.

The formal claim must be filed before a Federal District Court. The judge will give notice to the defendant within a period of five days, so it has the opportunity to raise objections relating to the claim's compliance with the relevant mandatory legal requirements. Thereafter, the judge will have ten days to certify that all the formal requirements of the claim are met and will then admit or dismiss the claim. Then, the judge will summon the defendant, who will have 15 days to respond to the claim. After this, there is a conciliation hearing to encourage the parties to settle. If the parties settle, the judge will approve the settlement. In the alternative, the judge will open the evidentiary stage for a period of 60 days in which the parties can offer and prepare the evidence.

Then the judge will notify the parties of the date of the final hearing, which will be held no later than 40 days after the conclusion of the evidentiary stage. At the final hearing the parties will present their evidence. The parties will then have a period of ten days to submit their closing statements. The judge will issue the final judgment within 30 days after the final hearing, which concludes the proceedings.

Key contacts

Gerardo Lozano
Partner
DLA Piper Gallastegui y Lozano
gerardo.lozano@dlapiper.com
T: +52 55 5261 1801
Overview of court system

The Netherlands is a civil law jurisdiction, which means that Dutch courts operate under the Dutch Civil Code. Unlike in common law systems, in which decisions are primarily based on precedent, Dutch courts primarily look at the principles and rules codified in the Civil Code, although precedents are often used to strengthen a case.

Judicial authorities are organized into: (i) 11 district courts; (ii) 4 courts of appeal; and (iii) the Supreme Court. Each district court has a number of divisions. The cantonal division covers rental disputes, labor law and monetary claims of up to EUR25,000. The civil division of the relevant district court deals with commercial disputes with a value of over EUR25,000.

Most civil matters are decided by one judge alone at first instance. However, district courts also have a full-bench panel with three judges to deal with the more complex cases.

If a party disagrees with the district court judgment, the case may be appealed to a court of appeal and subsequently to the Supreme Court, which is the highest court in the Netherlands. There is no appeal from a decision of the Supreme Court.

The Supreme Court rulings serve as a guideline to the lower courts. Only matters of due legal process are dealt with by the Supreme Court, which accepts the facts of a case as determined by the lower court and only investigates whether the law has been correctly applied.

In addition to the above, to satisfy the growing demand for specialized dispute resolution, the Netherlands Commercial Court (NCC) was established on January 1, 2019. The NCC focuses on complex international commercial disputes. It offers experienced judges, delivers predictable and thus reliable judgments and faster resolution of disputes. Parties can agree to litigate in English. The estimated court fees for the NCC are EUR15,000. With the launch of the NCC, the Dutch judiciary aims to provide a feasible alternative to arbitration.

Limitation

The general limitation period for civil claims is three to five years, depending on the nature of the claim concerned.

Procedural steps and timing

An ordinary civil lawsuit in the Netherlands starts with a writ of summons. In the regular district courts, representation by an attorney admitted to the Dutch bar is mandatory. The writ contains the claim as well as its substantiation. The writ needs to be served onto the defendant by a bailiff, and this process may take at least one week. At the court date mentioned in the writ, the writ needs to be submitted to the court, along with evidence in the form of documents. The defendant is then granted a period of six weeks for filing its statement of defense. After this, usually an oral court hearing will be scheduled. The timing for the entire proceedings heavily depends on the court’s workload. However, in a straightforward civil lawsuit, the time from serving the writ until obtaining a judgment will usually be approximately 12 to 18 months.

The proceedings can, of course, be of complex nature and timeframes for each stage of proceedings vary greatly depending on the complexity of the case. A claim for damages, witness or expert hearings and requests for the submission of documents are examples of
complications that may cause proceedings to take longer. The parties can also agree at any stage of the proceedings to settle the case and suspend the proceedings by mutually notifying the court of an agreed suspension. Parties can also suspend the proceedings for other reasons.

Disclosure and discovery

In the Netherlands, although parties must substantiate their statement with evidence, in principle they are free to determine what evidence they want to rely on. A court may, however, order a party to submit certain additional evidence. Refusing to provide this additional evidence could impact a party’s position, as the court may draw adverse inferences from the party’s refusal.

Further, it is possible to request documents to be submitted. The submission of documents can be requested prior to or during legal proceedings. The procedure is 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 requested documents have to relate to a legal relationship in which the applicant is a party. The request is not limited to hard copy documents; it can also entail any (electronic) documents held on electronic devices. After hearing the counterparty, the district court will decide on the request. Legal professional privilege applies to communications from attorneys and certain other professionals. Parties cannot usually be required to disclose privileged documents.

Default judgment

If a defendant does not appear in proceedings (i.e. it fails to bring forward an attorney representing it), then in principle default judgment will be awarded, unless prima facie the claim appears to be without any legal basis.

A defendant confronted with a default judgment has the option to object. The objection must be filed with the court that has delivered the default judgment.

Appeals

Most civil cases begin in the district courts. The domicile of the defendant usually determines the district court that will hear the claim. In general terms, appeals against judgments of the district courts can be heard at one of the four high courts of appeal. The relevant court of appeal re-examines the facts of the case and reaches its own conclusion. In most cases, it is possible to contest the court of appeal’s judgment by appealing to the Supreme Court. The Supreme Court only assesses whether there is a breach of legal principles or procedural rules, and does not conduct a full factual assessment of the case.

The usual timeframe for appeal is three months from the date of the district court judgment.

Interim relief proceedings

The Netherlands has a quick, informal procedure for obtaining an interim relief judgment. By means of interim relief proceedings, claimants can request the interim relief judge to impose interim relief on a short term basis. Interim relief measures are often aimed at: (i) requiring parties to – promptly – perform certain acts; or (ii) prohibiting parties from carrying out certain acts. Common examples are the request to suspend a contested decision with immediate effect until the appeal is decided as to the main issue, and the request to immediately lift (prejudgment) attachments on certain goods and / or bank accounts.

Interim relief can be sought before and during the (main) proceedings, as well as after a judgment has been rendered in the main proceedings. However, an interim relief judge must align his judgment with the (probable) judgment of the main proceedings.

Interim relief proceedings start with obtaining a date for the hearing with the interim relief judge. Usually, a hearing takes place within one to three weeks, although much shorter timeframes are possible in urgent cases (even within a matter of hours). A writ of summons needs to be served by a bailiff, who is allowed one week to serve, although this timeframe can also be reduced by the interim relief judge. At the oral hearing, both parties can elaborate on their position. For the defendant, representation by an attorney is optional, but for the claimant it is mandatory. After the hearing, the interim relief judge will usually issue the interim relief judgment within a week, though this could also be done faster when immediate action is required. Appealing against an interim relief judgment is possible within four weeks.

The judge in interim relief proceedings does not examine the underlying claim in detail. When the request for interim relief relates to a claim that appears to be complex, the judge will unlikely allow the request for interim relief to proceed. Likewise, the interim relief judge
will only allow requests for interim relief when claimants demonstrate that they have an urgent interest that requires prompt intervention. In other words, requests for interim relief in respect of claims that are not urgent or too complex will be rejected and the claimant will be ordered to initiate (main) proceedings in the ordinary way.

Decisions granting interim relief will be of provisional nature, which means that a court decision in interim relief proceedings will not prejudice the rights of parties in ordinary civil proceedings that are pending at the time of the interim relief judgment or that might be initiated thereafter. In practice, however, an injunction or provisional measure can (and according to case law of the Dutch Supreme Court may) have irreversible consequences, which can only be redressed on appeal. For example, at the request of the claimant, the judge may stipulate in his order that the defendant shall forfeit a penalty for each day that the defendant fails to comply with the measure ordered or injunction, or for each day that the defendant acts in contravention of the decision. As the forfeited penalties are not automatically reversed, if the judgment in the ordinary proceedings is rendered in favor of the payer, the payer’s only option to reverse the situation would be to appeal the interim relief measure itself.

Notwithstanding their interim character, interim relief proceedings are not always followed by ordinary civil proceedings. Parties are not obliged to commence the main proceedings; they regularly accept the interim relief judgment and refrain from engaging in further (main) proceedings.

Prejudgment attachments and freezing orders

Ordinary civil proceedings (including interim relief proceedings), may be preceded by a prejudgment attachment, which is a measure used to obtain security for the recovery of a claim. Although a prejudgment attachment may be provisional in nature, the procedure for obtaining it is distinct from interim relief proceedings.

The request to attach / freeze the assets of the debtor should include details of the underlying principal claim and supporting evidence, as well as a clear description of the assets a party wishes to attach. Immovable and moveable assets (such as real estate, cars, art objects, boats and inventory), claims (including claims on banks i.e. the alleged debtor’s bank accounts) and shares may all be attached.

The judge assesses whether the evidence prima facie supports the alleged creditor’s course of action. The interim relief judge will not hear the alleged debtor, as the procedure is ex parte. After receiving the judge’s approval, a bailiff can attach the assets. The procedure for this depends on the type of asset. In general it is relatively easy, and if an urgent interest is deemed to exist (for example if a reasonable fear of embezzlement exists) judges might even grant approval the same day.

In contrast to interim relief proceedings, a prejudgment attachment must always be followed by a civil claim on the merits, which can be filed in the Netherlands or anywhere else. The claim must usually be brought within two weeks after attaching the assets. However, in complex or international cases the judge might set a longer term. If the claim is not brought within the stipulated term, the attachments are lifted by operation of law. If this happens, or if the claim is dismissed in the proceedings on the merits, the creditor might be liable for any damages caused to the debtor by the attachment(s).

Costs

The costs of litigation in the Netherlands can be divided into court fees, bailiff fees and legal fees.

The court fees depend on: (i) the claimed amount; and (ii) the capacity of parties. At the district courts, court fees range between EUR79 (for persons of limited means) and EUR3,894 (for corporate entities and claims over EUR100,000). Court fees are higher at courts of appeal, ranging between EUR314 and EUR5,213. Bailiff fees vary between EUR50 and EUR300.

The party against whom the judgment is given will usually be summoned to reimburse the opposite party’s court fees. Furthermore, a fixed amount will be awarded as a reimbursement for legal fees. This amount depends on the number of procedural acts involved and is usually only a fraction of the actual legal fees (amounts between EUR500 for straightforward proceedings and EUR15,000 are common). The exception is proceedings regarding intellectual property. In such proceedings, the actual legal fees of the succeeding party must be reimbursed.

Class actions

At the moment, there is no direct equivalent in the Netherlands of the type of class action seen in the US. However, in the Netherlands, a class action can be brought by a representative entity (either an association or a foundation) that promotes the interest of a group of persons who suffered damages as a result of the same or similar alleged wrongdoing.
The class action lawsuit merely serves to establish liability; in principle no damages are awarded. The declaratory judgment issued in the class action lawsuit can then be used by claimants to (i) claim damages in individual follow on proceedings; or (ii) collectively seek a financial settlement. In the latter sense, parties to a collective settlement may jointly make a request to the Court of Appeal of Amsterdam to declare the financial settlement of a class action binding on all members of a group unless a member chooses to opt out of the settlement. Before declaring a settlement binding, the Court of Appeal of Amsterdam will assess whether the agreed compensation is reasonable. If the Court of Appeal of Amsterdam considers that the financial settlement is reasonable, it may declare it binding even when (i) claimants or beneficiaries of the class action lawsuit were domiciled in countries other than the Netherlands; (ii) the claim was not based on Dutch law; or (iii) the alleged wrongdoing took place outside the Netherlands. The Dutch class action system is easily accessible and effective and has therefore become increasingly popular.

On March 19, 2019, the Dutch Senate adopted the Act on collective damages in class actions (WAMCA), which will make it even easier to litigate mass damages through the Dutch courts. The new provisions will apply to class actions relating to event(s) on or after November 15, 2016 that are brought after the WAMCA has entered into force. The date for the WAMCA to enter into force is yet to be determined.

In contrast to the current law, it is possible to claim damages in a class action under the WAMCA. Furthermore, the WAMCA introduces enhanced standing and admissibility in terms of governance, representation and funding of the representative authority (the claiming organization). In addition, the class action must have a sufficiently close connection with the Dutch jurisdiction. This connection will exist if:

- the majority of the persons on behalf of whom the class action is initiated are Dutch residents;
- the defendant resides in the Netherlands; or
- the events on which the class action is based occurred in the Netherlands.

The judgment is binding on all Dutch residents that fall within the scope of the claiming organization, with the exception of those that opted out. In principle, the opposite applies to non-Dutch residents: non-Dutch residents can voluntarily opt in to represent their interests by the class action. However, the court can order that the opt-out system applies to a precisely identified group of non-Dutch residents.

Key contacts

Ewald Netten
Partner
DLA Piper Nederland N.V.
ewald.netten@dlapiper.com
T: +31 20 5419 865
New Zealand

Last modified 20 December 2019

Overview of court system

New Zealand’s courts operate under the common law legal system.

The New Zealand court system has various levels of first instance and appeal Courts, including:

- The District Court
- The High Court
- The Court of Appeal
- The Supreme Court

The Supreme Court is the highest court in New Zealand. Most commercial cases start in the High Court, with appeal options to the Court of Appeal and possibly the Supreme Court.

There are also specialist courts, including the Employment Court, the Environment Court and the Family Court, and some specialist tribunals.

Limitation

Limitation is governed in New Zealand by the Limitation Act 2010. This imposes a time period before the end of which proceedings must be commenced for a claim or dispute.

A failure to issue proceedings before the relevant time period expires is a defence to the claim and will result in that claim becoming "time barred".

In general, most claims must be brought within six years of the date of the act or omission on which the claim is based, unless the late notice provisions apply. If the claimant has late knowledge, the limitation period expires 3 years after the late knowledge date, or 15 years after the date of the act or omission on which the claim is based.

There are also a small number of specific limitation periods set out in specific Acts of Parliament.

Procedural steps and timing

Proceedings are initiated by a claim or application, which must be filed in the relevant court and served on all parties to the proceedings. Parties will then exchange "pleadings" (such as statements of claim, defences, counterclaims, and replies) which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party. A statement of defence must be filed within 25 working days, but this period can be extended by the court. The timeframe for litigation will depend on the type of claim and a number of other factors. This is generally discussed at the first case management conference, which occurs after a statement of defence has been filed.
For a standard civil proceeding, initial disclosure of relevant documents must be provided at the same time as the statement of claim or statement of defence is filed.

Once the exchange of pleadings is complete, parties will generally undertake the discovery (also known as the disclosure) process, and then go on to prepare their evidence for a final hearing of the dispute.

Case management conferences are held at regular intervals throughout the process to address procedural issues as they arise, and manage the conduct and timeframes of the case up until its final hearing.

A company must be represented in court by a lawyer and cannot represent itself. Individuals may appear on their own behalf without a lawyer, if they choose to do so.

**Disclosure and discovery**

In New Zealand, each party to civil litigation will have to provide discovery to the other parties. The High Court Rules impose an obligation on parties to the litigation to co-operate to ensure that the process of discovery and inspection are proportionate to the subject matter of the proceeding and, where possible, practical arrangements are adopted to reduce the scope and burden of discovery.

A statement of claim or statement of defence must be served together with initial disclosure, which must contain all the documents referred to in the pleading and any additional principal documents relied on to prepare the pleading.

Subsequent to the exchange of pleadings, the parties must then go through the discovery process. Discovery orders must be discussed at the first case management conference.

There are two types of discovery orders available:

- Standard discovery; or
- Tailored discovery.

**Standard discovery** requires each party to disclose the documents that are or have been in that party's control and that are:

- documents on which the party relies; or
- documents that adversely affect that party's own case; or
- documents that adversely affect another party's case; or
- documents that support another party's case.

**Tailored discovery** is generally ordered where the parties agree a reduced scope of discovery than standard discovery. Parties are encouraged by the Court to agree on tailored discovery orders.

In limited circumstances, discovery may be ordered prior to the commencement of proceedings where an applicant is able to satisfy the court that he or she needs to obtain discovery in order to find out whether or not a cause of action exists against a potential defendant.

Discovery can also be ordered against third parties, where they are believed to hold relevant documents, but the party applying for that discovery order must bear the reasonable costs of the third party in complying with the discovery order.

The discovery process involves the exchange of affidavits of documents, that list the documents to be discovered in various sections and in accordance with the court electronic discovery protocol. Privileged documents must be listed, but cannot be inspected.

**Default judgment**

Default judgment can be applied for in proceedings in any court where a defendant does not: (i) file a defence within the specified timeframe after a statement of claim has been served; or (ii) fails to make an appearance at a hearing. Once a default judgment is ordered against a defendant, a defendant can, in limited circumstances, seek to challenge the granting of judgment by default. The defendant will need to file an application or motion to set aside the default judgment within a specified period of time and show cause for why the judgment should be set aside (usually lack of notice of the claim or that notice was given of intent to defend but that notice was not brought to the attention of the court which granted the default judgment).
Appeals

Judgments of the District Court can be appealed as of right to the High Court, and first instance judgments of the High Court can be appealed as of right to the Court of Appeal. A judgment of the High Court on appeal from the District Court can only be appealed to the Court of Appeal with leave of either the High Court or the Court of Appeal.

Leave may also be required to appeal an interlocutory decision.

All appeals to the Supreme Court require an application for leave to appeal first.

The various court rules proscribe the appeal period, which is generally 20 working days from the date of judgment.

Appeals will generally, because of the limitation of introducing new evidence in most civil appeals, be resolved more quickly than matters at first instance. The appeal court will not generally hear from any witnesses.

Interim relief proceedings

A range of interim remedies is available to parties to legal proceedings. Interim remedies are provisional measures generally granted with a view to preserving the status quo, or preventing the dissipation of assets. Common applications for interim remedies include:

- interim declarations; interim injunctions (injunctions are orders prohibiting a person from doing something or requiring a person to do something);
- orders for the detention, custody, preservation, inspection, sampling of relevant property;
- sale of relevant property which is of perishable nature or which for any other good reason it is desirable to sell quickly;
- freezing injunctions; search orders; orders to provide information about assets;
- injunctions restraining foreign legal proceedings;
- applications for security for costs;
- applications for orders for interim payment on account of any damages, debt or other sum the court may hold the defendant liable to pay; applications for further information;
- extensions of time;
- and specific disclosure.

An order for an interim remedy may be made at any time, including (i) before proceedings are started; and (ii) after judgment has been given. However, the court may only grant an interim remedy before proceedings are started if the matter is urgent or it is otherwise desirable to do so in the interests of justice.

As a general rule, no order should be made in civil proceedings without notice to the other side unless there are good reasons for departing from the general rule that notice must be given. An application for interim relief must be supported by affidavit evidence. In ex parte (i.e. without notice) applications, relief can generally be obtained within a matter of days. If the court grants the ex parte application, the defendant is provided with an opportunity to object to the granting of relief at a subsequent hearing. At this hearing, the defendant would seek to persuade the court that any order made should not be continued.

The criteria for obtaining relief varies depending on the type of relief sought but the overarching principles the court will consider when it comes to interim injunctions, for example, include:

- whether there is a serious issue to be tried. The evidence must show that the applicant has a real prospect of succeeding in their claim and, if so:
  - whether, if the applicant were to be successful at trial, damages would be an adequate remedy;
  - whether, if the respondent were to be successful at trial, damages under a cross-undertaking to pay damages by the applicant in return for an interim injunction would be an adequate remedy; and
- if there is a question as to the adequacy of damages to either or both parties, whether it would be just and reasonable to grant the relief sought.
The parties can appeal the court's decision on the application for interim relief to a higher court, although leave to appeal may be required in some limited circumstances.

**Prejudgment attachments and freezing orders**

Freezing orders are a type of interim relief, which restrain a defendant from disposing of property prior to judgment. These applications are usually made in the High Court, and they can be made on a 'ex parte' (or without notice) basis, if there are good reasons for that, i.e. that notice or service may prompt the feared dissipation or dealing with assets.

A freezing order or an ancillary order can be made over any type of assets, for example bank accounts, shares, real property or motor vehicles, but will generally be limited to those assets within New Zealand.

A freezing order will be made only to preserve the status quo for the purpose of resolving a substantive cause of action brought by the plaintiff, and not as a stand-alone remedy.

The criteria for the issue of a freezing order is similar to the ordinary principles for the grant of interim relief, as discussed above, although the potentially serious impact on a defendant's property rights raises the threshold for the granting of a freezing order. Generally, an applicant must show that:

- the applicant has a good arguable case (in the substantive cause of action);
- the refusal of a freezing order will give rise to a real risk that any judgment pronounced in the action will remain unsatisfied, or that the recovery of any judgment will be prejudiced by reason of the removal by the defendant of assets from the jurisdiction, or their dissipation within it; and
- the balance of convenience favours the making of the order.

An applicant for a freezing order is required to provide an undertaking as to damages, where the applicant undertakes to submit to an order of the Court for the payment of compensation to any person affected by the operation of the order, should the applicant be ultimately unsuccessful in the substantive cause of action.

**Costs**

New Zealand courts have wide discretion to award costs orders against either party to cover the opposing party's costs of litigation. The general rule is that "costs follow the event". This means that the unsuccessful party will be liable to pay the litigation costs of the successful party.

Costs are awarded based on a scale set under the relevant procedural rules (usually the High Court Rules in a commercial case). This provides set amounts for each step in the proceedings on one of three bases – simple, standard or complex. Generally a party will recover approximately one third of its actual costs.

Courts may depart from the general rule in various circumstances and have a wide discretion over costs, for example:

- Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs orders that reflect the litigants' relative success and failure.
- Increased costs may be ordered where the party opposing costs has contributed unnecessarily to the time or expense of the proceedings; or the party has refused to accept an offer of settlement that is more than the party ultimately recovered.
- Indemnity (actual) costs may be awarded where a party has acted vexatiously, there is a contractual entitlement to indemnity costs, or the person in whose favour the costs order is made was not a party to the proceedings.

There are also various court fees that apply for the filing of proceedings, and for hearing charges.

**Class actions**

In New Zealand, it is possible to bring a 'representative' proceeding, or class action, where the proceeding is commenced by (or against) one person as a representative of numerous persons who have the same interest in the subject matter of the proceeding either with the consent of all represented persons, or with a direction from the court.
Class actions have historically been rare in New Zealand, but are increasing.

The Law Commission is currently reviewing whether new legislation is required to deal with class actions and litigation funding, as there is currently no defined legal framework for class actions in New Zealand.

Key contacts

Caroline Laband  
Partner  
DLA Piper New Zealand  
caroline.laband@dlapiper.com  
T: +64 9 300 3829

Alicia Murray  
Partner  
DLA Piper New Zealand  
alicia.murray@dlapiper.com  
T: +64 9 300 3830
Overview of court system

Norway has a unitary (rather than federal) civil law court system that is comprised of:

- 64 courts of first instance (63 District Courts and one Bankruptcy Court based in Oslo);
- six regional Appeal Courts; and
- the Supreme Court, which is Norway’s final court of appeal based in Oslo.

District Courts are normally the courts of first instance in most medium to high-value civil disputes. Cases in the District Court are usually presided over by a single professional judge. The professional judge may be assisted by two lay judges or expert lay judges if the parties request or the judge deems such assistance appropriate.

In many cases, civil claims must be submitted to and dealt with by a relevant Conciliation Board before they are submitted to a district court. While normally this requirement only applies to low value claims (under NOK125,000), even higher-value claims must be submitted to a Conciliation Board if one of the parties is not represented by a Norwegian lawyer. Conciliation Boards are staffed with non-lawyers and have two broadly defined functions. First, they provide a facilitated mediation service aimed at helping parties to reach an amicable settlement or establish whether an asserted claim has a legitimate basis. Second, Conciliation Boards can issue judgments, which may be appealed to the relevant district court. Parties may bypass the Conciliation Board and, instead, submit their dispute directly to the district court in certain circumstances, including where the dispute is of sufficient value and both parties are legally represented.

In addition to Norwegian courts and Conciliation Boards, parties may also refer their disputes to quasi-judicial bodies known as Administrative or Complaints Tribunals. An example of such a body is the Financial Complaints Tribunal (Finansklagenemnda), which hears disputes between consumers and banks, insurance companies and other financial institutions. Administrative and Complaints Tribunals of this nature often offer a highly specialized and low-cost alternative to proceedings in Norwegian courts, and are in some circumstances a pre-requisite to commencing a claim in a district court. However, note that the decisions of such tribunals are not binding.

Limitation

As a general rule, a civil claim must be commenced before the applicable limitation period expires. Under Norwegian law, limitation periods vary depending on the nature of the claim, but the general limitation period is three years. The date on which time begins to run may differ depending, for instance, on whether the claim is in tort or contract.

Procedural steps and timing

Before submitting a claim to the Conciliation Board or lodging a claim in a district court, a potential claimant must 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.

It is important to note that, once proceedings are underway, Norwegian judges must consider at every stage of the proceedings whether
they consider settlement could be reached through mediation (unless the nature of the case or other circumstances militate against mediation). Such mediation may be and is often administered by a judge, who is required to maintain confidentiality if mediation is unsuccessful. A judge involved in an unsuccessful mediation may only take part in the subsequent proceedings if the parties agree and if the judge does not consider it inappropriate.

If an amicable settlement cannot be reached at the pre-claim stage, as a general rule, a party wishing to have its civil claim determined by Norwegian courts must commence proceedings by submitting a statement of claim to a district court. A party may represent themselves without the need for counsel, although this is a rarity in commercial litigation.

The court will effect service of the statement of claim, following which the defendant is normally given three weeks in which to respond by way of a defense. Depending on the complexity of the case, it is not unusual for a defendant to request an extension of time. If a further extension is requested, the court will ask the claimant if it has any objections.

The court is required to convene the first procedural hearing “immediately after” the filing of the defense. In practice, it usually scheduled within one month after the filing of the defense. The hearing is normally conducted by way of a telephone conference call with only counsel present.

At the first procedural hearing, the court will normally consider:

- whether further written submissions are required;
- whether the proceedings should be broken-up into stages;
- access to or production of evidence that has been requested; and
- whether mediation would be appropriate.

The court will also normally set the date for the main hearing, which is usually held within six months of the date when the statement of claim originating proceedings was submitted (unless special circumstances warrant a later date).

Judgments are typically issued within two to six weeks of the close of the main hearing, although a complex, multi-party case will usually lead to a longer period before a judgment is issued.

Note that summary judgment can be obtained where a claim or a defense is unsustainable. In such circumstances, the proceedings are conducted in writing.

**Disclosure and discovery**

Civil proceedings in Norwegian courts do not entail an expansive discovery process. However, each party to civil proceedings in Norway 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 requiring each party to disclose the existence of material evidence that is not in the other party's possession where there is good reason to believe that the other party is not aware of such evidence. Failure to adhere to this general duty is a criminal offence.

In practice, disclosure of documents is achieved through a process of documentary requests. In that regard, each party to civil proceedings has a right to request the other party to produce specific and narrow categories of documents. A request for documents must be specifically identified and so-called fishing expeditions are prohibited. If a party refuses to produce documents in response to such requests, it may be compelled to do so by the courts. Both parties and others may be compelled to respond to a request by the other party or the court 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.

As regards those documents that fall within sufficiently specific and narrow categories requested, as stated above, each party is under an obligation to disclose those documents that are relevant, and which the other party to the proceedings may not be aware of. That obligation extends not only to documents supportive of a party's case, but also to documents that are detrimental to it. Such documents must be disclosed if they are in a party's possession or if a party is able to access them through a third party it controls. However, parties are exempted from their disclosure obligations with respect to privileged information communicated with their 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.
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, e.g. submit a defense, or fails to attend a court hearing. 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 the service of the default judgment.

The threshold for granting an application for reinstatement is very high.

Appeals

Judgments of a District Court may be appealed to a Court of Appeal on questions of fact, law or procedure. Appeal proceedings are available as of right, except in cases of very low value, where permission to appeal is required. The Court of Appeal may also refuse permission to appeal if it considers that it is clear that the appeal will not be successful.

An appeal must be made within one calendar month from the date of the service of the District Court's judgment. The respondent will then normally be given a three-week deadline to submit a reply.

The average processing time for civil cases in the Court of Appeal is six months. However, complex multi-party cases will usually have a significantly longer processing time.

An appeal from a judgment of the Court of Appeal to the Supreme Court is available only by leave of the Appeals Selection Committee. Such leave is given ordinarily only in cases of high precedential value, public importance or where there are other strong reasons that merit consideration of the case by the Supreme Court. The deadline for appeal is the same as for the Court of Appeal. There are no official statistics with regard to the processing time in the Supreme Court, but in our experience cases are usually heard within a period of six months.

Interim relief proceedings

Norwegian courts have the power to order two broad categories of interim relief in connection with civil proceedings: (i) arrests; and (ii) interim measures. Both of these categories of relief are temporary and may be obtained before main proceedings are commenced. Most of the principles governing when such relief is available are equally applicable to arrests and interim measures. However, arrests are available only in cases involving a monetary claim. So, in the absence of a monetary claim, interim measures are the only form of interim relief available.

A party seeking interim relief may represent themself without the need for counsel, although this is a rarity in commercial litigation.

An application for interim relief should be submitted to the District Court where the defendant is ordinarily domiciled or, in the case of an arrest, where assets belonging to the defendant are or are expected to arrive in the foreseeable future. Both arrests and interim measures may only be granted if both the substantive claim underpinning the interim proceedings and the basis for why interim relief is necessary are established on the balance of probabilities.

Arrests

Norwegian courts may arrest assets where the debtor's conduct gives reason to believe that enforcement of the claim would otherwise be evaded, considerably impeded or would have to take place outside of Norway. An asset arrest may be discharged if new evidence emerges showing that the claim or the basis for security no longer exists. It may also be discharged if the petitioner improperly delays the main proceedings.

An asset 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 favor the arrest has been granted.

The interim remedy of arrest is not limited to assets. In exceptional circumstances, Norwegian courts may also exercise their power of arrest in civil proceedings by restricting an individual's rights to leave Norway.

Interim measures

As regards interim measures specifically, those 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. 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 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. If granted, both arrests and interim measures will normally be subject to a further consideration by a court following the main hearing in the course of the main proceedings. Such proceedings must ordinarily be commenced within two weeks of interim relief being ordered.

If delay poses a risk, an interlocutory order for interim relief can be made without an oral hearing. If so, the court normally rules within a few days of the application. Otherwise there will be a prior oral hearing, normally scheduled within one to two weeks.

If there has not been a prior oral hearing, the defendant may object to the order by requesting a subsequent oral hearing. If there has been an oral hearing, the defendant may appeal the order to the Court of Appeal. An appeal must be made within one calendar month from the date of the service of the District Court's decision.

Prejudgment attachments and freezing orders

Prejudgment attachments and freezing orders are a category of interim relief, and hence governed by the same principles as set out in Interim relief proceedings. This form of relief is temporary and may be obtained before main proceedings are commenced. An application should be submitted to the district court where the defendant is ordinarily domiciled or, in the case of attachments, where assets belonging to the defendant are or are expected to arrive in the foreseeable future.

Norwegian courts have the power to order attachment of assets. Such order of attachment can relate to any object / asset which can be converted to money and belongs to the defendant. The exemptions are very limited, and are drawn up to protect private individuals from losing essential assets such as clothing and the ability to sustain their means of livelihood.

The interim measures may only be granted if both the substantive claim underpinning the interim proceedings and the basis for why interim relief is necessary are established on the balance of probabilities. Main proceedings must ordinarily be commenced within two weeks of interim relief being ordered. A party may represent themselves without the need for counsel, although this is a rarity.

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. An asset arrest may be discharged if new evidence emerges showing that the claim or the basis for security no longer exists. It may also be discharged if the petitioner improperly delays the main proceedings.

Costs

The general rule in Norwegian civil proceedings is that the successful party is entitled fully to recover its reasonable and necessary legal costs from the unsuccessful party. That general rule may be departed from in certain circumstances, including:

- if the court decides that the unsuccessful party had good reason for having the case tried;
- the successful party rejected a reasonable settlement offer; or
- if the successful party is otherwise sufficiently culpable for the dispute not having been resolved out of court.

If there is no clear successful party in the proceedings, Norwegian courts will usually order parties to bear their own legal costs.

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 is NOK5,650 (for 2018). This includes the first day in the court. If the trial does not end with a judgment (e.g. due to settlement), the fee will be reduced. The fee for interim relief is NOK2,825.

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 organization, foundation or a public body responsible for advancing specific interests.

In order for the court to approve a claim to be heard as a class action, four requirements must be satisfied:

- several legal persons have claims or obligations arising out of the same or substantially similar factual and legal bases;
- the claims can be heard by a court with the same composition and in essence pursuant to the same procedural rules;
- the claims are most appropriately dealt with by way of a class action; and
- it is possible to designate a class representative.

If the court approves a claim as a class action, it will at the same time decide on the scope of the claims that may be included in the class action and whether the action will proceed under the opt-in or the opt-out provisions. If the case proceeds under the opt-in alternative, the court will fix a deadline for parties to register for the class action. If the case proceeds under the opt-out alternative, persons who do not wish to participate in the class action may withdraw.

The court will also designate a class representative, who must safeguard the rights and obligations of the class. Any person who can bring a class action, and who is willing, may act as class representative. The class representative has a right and a duty with respect to the costs of the class action, and thus, the representative must be able to bear the class's potential liability for costs to the opposing party.

If the class members are found liable for any costs towards the class representative, the court must fix a maximum liability at the time the class action is approved, and the court may decide on an advance on costs.

The class must be represented by a lawyer, unless the court grants an exemption.

**Key contacts**

Johan Ratvik  
Partner  
Advocatfirma DLA Piper Norway DA  
jojan.ratvik@dlapiper.com  
T: +47 24 13 16 18
Overview of court system

The Polish legal system is codified and part of the civil law tradition. The principal act which governs civil proceedings in Poland is the Civil Procedure Code (CPC) and it 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, by default, exercise general jurisdiction in almost all civil and criminal matters. Common courts in Poland 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 PLN75,000 (c. EUR17,500) and appeals from district courts); 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 (i.e. it will only interpret the relevant law and not re-examine the facts of a case), capable of reviewing second instance judgments on an extraordinary basis.

With the exception of certain judgments of the Supreme Court, judgments do not constitute 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.

Limitation

The limitation periods generally applicable to civil claims are:

- six years; or
- three years where the claim relates to periodical performance and / or business activities (i.e. commercial 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 such defense, the court will be entitled to award a 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, as appropriate).
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)).

Upon filing a statement of claim, the court will consider whether it complies with the necessary formalities. Provided that the statement of claim complies with the formalities, the court will order that it be served on the defendant and it will set a date for the first hearing. Depending on the court, this stage may take from two weeks up to even two or three months.

A party may seek to file supplementary pleadings with the court. However, all allegations, applications and evidence should be raised in the statement of claim or in a response to a statement of claim (only as an exception may a party file a subsequent preparatory pleading that is accepted by the court). 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 preparatory proceedings have been raised on time or if they have been raised too late. Parties to the dispute are required to present relevant evidence, so there is no need to present all the source documents connected to the case. Nevertheless, 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 that require a number of witnesses or expert hearings, judgment is usually issued 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 which evidence they want to use. All supporting material relating to facts that are relevant to the determination of a case constitute evidence. The court has discretion to assess the credibility and probative value of evidence, based on comprehensive consideration of the available material. The parties are obliged to present evidence in order to establish facts from which they draw legal effects. The court may also admit evidence which has not been presented by a party (e.g. evidence introduced in expert opinion or the deposition of a witness). In principle, however, the parties have the onus 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 that it may prove. The court may order the other party to disclose the document if it is satisfied that such specific 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 that is in their possession and which evidences a fact that is relevant to the case, unless the document contains privileged or confidential information. The obligation to disclose a specific document may not apply where the party in possession of the document:

- is entitled to refuse to testify as a witness regarding the facts included in a document; or
- holds a document on behalf of a third party which could, for the same reasons, object to the production of the document.

Should a party fail to produce a specific document ordered to be produced by the court, 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 despite the court's decision.

**Default judgment**

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

- the defendant fails to appear at a trial or if he / she 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.
A defendant, against whom a default judgment has been issued, 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 entirely 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 of the judgment and has two weeks from its delivery to file an appeal. 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 the second instance, the court (comprising three judges) rules on the merits and reconsideres 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 forward the case files to the court of second instance. The only instruction contained in the CPC is that the court of first instance must “promptly” forward 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 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.

The timing and duration of the proceedings depend on the court's workload and the complexity of the examined 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 (i.e. measures sought in order to satisfy an eventual judgment) and are referred to in the CPC as security. In pecuniary cases, security may consist, for example, of 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-pecuniary 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) together with 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, not later than a week after they have been filed with the court. An application for security filed with the court before the statement of claim 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 1/5 of 5% of the value of the case, capped at a PLN-equivalent of EUR12,000 (in cases with a value of more than a PLN-equivalent of EUR 1 million) if it is filed before the judicial proceedings or during the course of the proceedings. In other cases (when security is filed together with the statement of claim), there is no separate court fee for the application.

A defendant against whom a judgment granting security has been issued, may file an appeal within seven days of delivery of the judgment. If the court does not grant relief, the claimant may likewise challenge the court’s decision and file an appeal within seven days from the delivery of the judgment.

**Prejudgment attachments and freezing orders**

As noted in Interim relief proceedings, prejudgment attachments and freezing orders are interim relief measures, referred to in the CPC as security. Security may be sought in any civil case heard by a court or an arbitration tribunal. The court may grant security prior to the commencement or during the course of the proceedings. In principle, the court 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 or before the proceedings if the party / participant substantiates its claim and legal interest (demonstrates prima facie that its claim is legitimate and has a legal basis) in having the security or injunction granted. A prima facie 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 achievement of the objective of the proceedings. 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 pecuniary claims, the court shall grant such an injunction as it considers appropriate in the circumstances, not excluding a security or injunction applicable to pecuniary 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, or 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 the proceedings initiated by the filing thereof are concluded with a judgment or decision that cannot be challenged.

## 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 a PLN-equivalent of the amount EUR50,000. 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 subject of a dispute is between EUR500,000 and EUR1.25 million, the minimum rate is EUR3,750 and the maximum rate is EUR22,500, and if the subject of a dispute is above EUR1.25 million, the minimum rate is EUR6,250 and the maximum rate is EUR37,500. 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.

## 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 (so-called 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;
- 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. The members of a group in class action proceedings can only be persons who 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. However, persons who did not join the group or who have left the group (the admissibility of leaving the group is limited by certain time frames) can individually pursue their claims.

## Key contacts
Qatar

Overview of court system

Qatar’s courts operate under a civil law legal system. Qatar’s legal system is rooted in the Napoleonic Code which was adopted (via the Arab Civil Code) by many countries in the Middle East. Judges are independent of the state and their decisions are taken and implemented in accordance with the law. Hearings in Qatari court proceedings are open to the public unless the court decides of its own accord or at the request of an interested party to hold them in closed session. Case documents, however, are confidential to the litigants. Arabic is the official language in the Qatari courts and all pleadings must be in Arabic (with foreign language documents requiring translation by a court approved translator). While it is extremely rare for witnesses to be required to give evidence in court, the courts will hear evidence given through an interpreter where the evidence of a non-Arabic witness is required.

Qatari civil courts have jurisdiction over civil, commercial, banking, insurance and maritime matters. The civil court system is organized in the following instances:

- the First Instance Court, which comprises:
  - the Lower Civil Court, which hears and decides on all civil and commercial cases where the amount in dispute does not exceed the sum of QAR100,000 (c. USD27,000); and
  - the Higher Civil Court, which hears and decides cases where the amount in dispute exceeds QAR100,000, and all cases regarding personal status of non-Muslims. It also acts as an appellate court, hearing appeals against judgment issued by the Lower Civil Court;

- the Court of Appeal, which hears appeals filed against judgments issued by the Higher Civil Court (as well as appeals issued by the Higher Criminal Court and Administrative and Labour Courts); and

- the Court of Cassation, which is the ultimate court of appeal in Qatar, and hears appeals filed against judgments issued by the Court of Appeal.

In addition, there are a number of specialist tribunals. Judgments issued by these specialist tribunals can be appealed to the Court of Appeal.

Parties doing business in Qatar should also be aware of the Qatar Financial Centre (a business and financial center located in Doha) which, as a part of its business friendly environment, provides an alternative judiciary in the form of the Qatar International Court (QIC). The QIC, which has a bench formed of internationally renowned common law judges, is designed to hear cases quickly and efficiently. Parties with disputes in Qatar should therefore consider making use of this more modern alternative to Qatari court litigation.

Limitation

Under Qatari law, the application of limitation periods is usually a substantive law issue and therefore governed by the law applicable to a particular contract or interaction between the parties. Advice should be sought on a case-by-case basis on the applicable limitation period since its expiry can critically affect a party’s ability to bring a claim. Where Qatari law is the applicable law in respect of a limitation period, the general position is set out below.
Qatari law also prescribes a range of different limitation periods depending on the specific type of claim in issue. In particular, the position in respect of contractual claims is generally as follows:

- claims which are considered to arise out of a commercial arrangement / activity will have a limitation period of ten years from the breach occurring; and
- claims which are not considered to arise out of a commercial arrangement / activity will have a limitation period of 15 years from the breach occurring.

**Procedural steps and timing**

Usually, civil and commercial disputes are resolved by the civil courts, initially before the Court of First Instance. If the value of a dispute exceeds QAR100,000, it will be heard by a bench of three judges in the Higher Civil Court.

A claim is commenced when the claimant files its statement of claim (together with supporting documents) at the court bureau and pays the applicable court fee. The court registrar registers the case on the same day the claim is submitted to them. The court bailiff will then serve a summons on the defendant, which will include the first hearing date. Lawyers for each party are required to attend and produce their respective power of attorneys on the hearing date. The court will then fix a date for the examination of the claim and request that the defendant produces its written submissions in response to the claim at the next hearing. This will typically be three to four weeks later. This process of requesting written submissions from each party will continue for a few months until the court is satisfied that it has seen all relevant evidence. Although representation is not, in theory, mandatory, navigating the court system (which is fairly complex and in Arabic only) is difficult without legal representation and, in practice, parties are almost always represented.

A common and important feature of Qatari court litigation (particularly in respect of complex construction disputes) is the involvement of one or more court appointed experts (selected from an internal panel). Once appointed, an expert will meet the parties over a period of three to six months, review the case, and prepare a report of their findings. During this time, the court will continue to hold monthly hearings to monitor the status of the expert review process.

The parties, individually or collectively, have a right to object to the content of the expert's report. If the court agrees with the objections raised, it may order that the expert revisits its report to address the parties' objections or, alternatively, make an order to appoint a different expert. However, once the court is satisfied that the content of the report is final, it will tend to rely heavily upon it when giving its decision.

It can typically take as long as two years for a judgment to be given in cases before the Qatari Court of First Instance. With respect to cases heard by the Qatar International Court, a judgment will be issued within 90 days from the date on which the respondent received official notice of the claim, unless the nature of the claim requires one or several extensions, pursuant to Schedule 6 of QFC Law No. (7) of 2005.

**Disclosure and discovery**

When filing a claim, claimants in the Qatari courts are only required to produce documents that support their claim. However, a litigant is entitled to request that its opponent be obliged to produce relevant documents if:

- it is permitted by Qatari law;
- the document is joint between the parties (i.e. relates to mutual obligations and rights between them); or
- if its opponent relies on it at any point in the proceedings.

There are often evidentiary difficulties for a party seeking disclosure of a document as it has to prove that the document exists and that it is in the possession of its opponent.

**Default judgment**

Where the statement of claim has been personally served on a defendant and that defendant does not submit any documentary pleading in response to the statement of claim or otherwise fails to appear in court after having been summoned, the court will give its judgment in the absence of the defendant. The judgment will therefore be based on the court's review and consideration of the evidence produced by the claimant alone. It is worth noting that as a means to compelling the defendant to participate in the proceedings, the defendant will be
served with the summons personally or at its residence. If the bailiff is unable to locate the defendant, the bailiff will deliver the summons to the defendant's representative, employee, spouse, relative or in-law. If the summons is not served on a defendant who subsequently fails to participate in the proceedings, the court will adjourn the case to a subsequent session and re-notify the defendant of the proceedings. Furthermore, even if service has been perfected on the defendant, there is scope under Qatari law for a party to have such judgments reconsidered in exceptional circumstances.

**Appeals**

There are two levels of appeal in Qatari court proceedings: first to the Court of Appeal and secondly to the Court of Cassation. Judgments of the Court of Appeal are capable of enforcement by the judgment creditor notwithstanding any further appeal by the judgment debtor. Enforcement action is dealt with by the separate Court of Execution. While the right of appeal to the Court of Appeal is automatic and thus the majority of cases are appealed, the right of appeal to the Court of Cassation is limited to circumstances where there has been an error of law or a procedural irregularity.

Any party seeking to appeal a judgment of the Qatari civil court should ensure that it does so within the applicable time limit: i.e. 30 days for an appeal to the Court of Appeal and 60 days for an appeal to the Court of Cassation. On average, it is common for the Court of Appeal and Court of Cassation to take one year to issue judgment in relation to an appeal, but this can vary depending on the caseload of the court at the time.

Prospective claimants should be conscious that the broad rights of appeal available in the Qatari courts can add considerably to the cost and delay in litigating in the country. This is similar to other legal systems in the Middle East.

**Interim relief proceedings**

Interim relief proceedings are not available in the Qatar courts. However, interim relief may be granted by way of a precautionary attachment to freeze the debtor's assets.

**Prejudgment attachments and freezing orders**

In Qatar, prejudgment attachments are referred to as precautionary attachments. In summary, a precautionary attachment can be sought from the Court of First Instance either as a precautionary measure or as an enforcement measure.

A precautionary attachment may be granted in circumstances where a party can prove: (i) that it is owed a due and payable debt; and (ii) the debtor is at risk of dissipating its assets and / or a flight risk.

An application for a precautionary attachment is an *ex parte* application which requires substantive proceedings on the merits to be filed, by way of a claim, within two weeks of the application being granted.

Any fixed and / or movable assets of the debtor are liable to attachment, including:

- licenses and registrations (including its trade / commercial license and accounts with the labor/immigration authorities);
- fixed assets (including real property);
- moveable assets (including bank accounts, plant, office furniture, machinery and securities); and
- receivables owed to the debtor from third parties in Qatar (including debts and liabilities).

Once an attachment order is granted, the court will write to various institutions where a debtor may have assets, and the governmental bodies who regulate them. Those institutions include:

- the central bank;
- the real property registration authority;
- the commercial licensing authorities;
- the vehicle registration authorities; and
- the stock exchange.
In its letters, the court will confirm the value of attachment and request the relevant institutions to confirm the debtor's assets that are held by and / or registered by them. The court will then ask for attachment to take place over the assets to the relevant value.

The court can also attach specific assets that the applicant believes are in the possession of a third party but are owned by the debtor. This includes instances where the debtor has goods in the warehouse of a third party or receivables / debts owed to it under a contract or some other instrument. The difficulty with placing an attachment on such assets is an evidential one; not only must the applicant be aware of the existence of the relevant assets / debts / receivables, it must also prove to the court that the assets belong to the debtor.

In circumstances where a debtor's assets are not sufficient to satisfy the value of the attachment, it is possible that some or all of its assets will be subject to attachment (to the extent they are discovered) regardless of whether or not they have any monetary value. (For example, an empty / overdrawn bank account or plant / machinery whose depreciation value is zero may nevertheless be subject to attachment).

The effects of an attachment is that assets are effectively frozen. For example, bank accounts are frozen and cannot be operated by their holder, and moveable assets and / or property are affixed with signs or seals to identify that they have been attached and cannot therefore be used.

It is also possible for a party to seek to impose travel bans on the authorized signatories and / or managers of the debtor. The individuals at risk will usually be those that are listed on the commercial license of the debtor.

There are two ways in which a party may lift an attachment on its assets:

- by providing security to the Court Treasury. Once this security is provided, the attachment can be transferred to the security, and so released from the debtor's assets. The form of security is at the discretion of the court and can include:
  - a payment into the Court Treasury for the amount of the attachment. Such payment can be made by a third party, such as any other debtor entity on behalf of the debtor; and / or
  - the authorized signatory(ies) and / or manager(s) of the debtor depositing their travel documents with the Court; or
- by successfully challenging the attachment. Challenges to an attachment proceed through the following tiered appeal system:
  - an initial grievance before the court that granted the attachment. It may be possible to successfully discharge a precautionary attachment after a successful grievance which usually takes three to four weeks to resolve (assuming that service of proceedings is effected swiftly);
  - an appeal before the higher Court of Appeal; and
  - an appeal before the Court of Cassation.

An attachment, if granted, remains in place while the challenge to the attachment is being considered, which can take up to two years to conclude.

It is not possible for the debtor to claim damages incurred as a result of the attachment.

**Costs**

Court fees (including experts' fees) are generally recoverable by the successful party in Qatari court proceedings, but only a nominal amount will be awarded for lawyers' fees. Where neither party has been entirely successful in their claims, the court may decide that each party shall bear its own costs. The prevailing party may be ordered to pay some or all of its costs if:

- the claim was undisputed by the defendant;
- the prevailing party caused unnecessary costs to be incurred; or
- the prevailing party failed to provide its opponent with the documents (or its contents) which the court deems to be conclusive in the matter.

The court fees payable for claims vary depending on the nature and value of the claim. The applicable court fees are also routinely amended and are not readily accessible on a centralized court website. The best source of information on current court fees is local counsel, who will be able to search the relevant court website. However, it is possible to estimate that where the claim is valued at QAR100,000 (c. USD27,000) or more, the fees will be approximately QAR3,000 (c. USD810). The fees for smaller claims are usually calculated as a percentage of the value of the claim itself. Claims before the Court of Cassation incur a fee of QAR25,000 (c. USD6,750), while claims before the Execution Court incur a fee of up to QAR1,000 (c. USD270).
Class actions

Class actions are not recognized under Qatari law or the Qatari courts procedure.

Key contacts

Henry Quinlan
Partner, Head of Litigation and Regulatory, Middle East
DLA Piper Middle East LLP
henry.quinlan@dlapiper.com
T: +971 4 438 6350
Romania

Last modified 19 July 2019

Overview of court system

The Romanian legal system follows a civil law tradition. The courts of law are organized as follows:

- Courts of first instance (covering the geographic spread of the relevant cities in the country);
- Tribunals (42 tribunals – one in each county's capital city);
- Courts of Appeal (15 courts); and
- High Court of Justice, the highest court in the judicial system.

A Constitutional Court exists to verify the constitutionality of laws, settle conflicts between public authorities and generally safeguard the Romanian Constitution. The Constitutional Court is not considered part of the judiciary, but rather as a separate and distinct public authority.

Limitation

The general limitation period in Romania is three years, but there are several exceptions, depending on the nature of the rights in question.

Procedural steps and timing

Civil litigation begins when the plaintiff files the statement of claim at court. Legal representation is not mandatory, either in the courts of first instance or at appellate level.

Jurisdiction of the courts is generally determined by the place where the defendant resides, although there are other relevant criteria for certain types of disputes. The proceedings are usually divided into three main phases: the written phase, the evidence and discovery phase and the final pleadings phase.

During the written phase, the plaintiff's statement of claim is allocated at random to a judge before it undergoes a prima facie examination. If the judge finds the statement to be lacking any essential formal elements (such as the complete names and addresses of the parties, the signature, etc.), the court will notify the plaintiff who will have a ten-day period to amend it. Should the plaintiff fail to do so, the statement of claim is annulled. The purpose of this procedure is to avoid prima facie incomplete claims being brought before the courts.

When the judge is satisfied that the statement of claim fulfills all necessary formal requirements, the defendant is served with the statement of claim. The defendant is then required to submit its statement of defense and counterclaim within a 25-day period. There is no possibility to extend this period, even in complex matters. However, in urgent cases, the deadline for the statement of defense can be brought forward by the court. The claimant may file an answer to the statement of defense within ten days of the latter being filed at court and served on the defendant.
After the exchange of written pleadings, the judge sets the date for the first hearing, the recommended period for which is 60 days. However, depending on the court's workload and / or the urgency of the particular matter, the first hearing can be set outside of the recommended period.

At the evidence and discovery phase, the judge decides which of the pieces of evidence proposed by the parties are relevant and pertinent to the dispute and proceeds to its management. The judge may, *ex officio*, order the parties to the litigation, relevant third parties or other public authorities and institutions to produce any other evidence that the court considers necessary, even if such parties disagree with the court's assessment.

Once the evidence and discovery phase is complete, the parties orally present the final pleadings at the hearing on the merits of the case. Written notes may be submitted and exchanged between the parties during trial and notes may also be filed at the court before a judgment is rendered.

The judge may give judgment at the end of the final session or he may reserve judgment to a later date. The detailed reasons for the judgment will be drafted and served on the parties at a later date (it is recommended that the detailed judgment be served within 30 days from the date of the decision but, in practice, this time period is not always observed).

Timeframes for each phase of the proceedings vary considerably depending on several factors, including the complexity of the case, the evidence to be produced, the workload of the court, the behavior of the parties etc. Typically, the written phase takes between 6 and 12 weeks. Upon completion of the written phase, a first hearing is listed to take place within two to six months. One can expect it to take a further 6 to 12 months for judgment to be given by the court of first instance depending on the complexity of the evidence which will be administered. In total, the estimated timeframe between the service of the claim and the first instance judgment for simple civil law claims is between 12 and 18 months.

**Disclosure and discovery**

The evidence is primarily presented by the parties in their written submissions (the claimant in the statement of claim and the defendant in the statement of defense). From the evidence presented, the judge may accept only the evidence considered admissible and necessary to determine the litigation. However, the court's role is inquisitorial (i.e. the court is actively involved in investigating the facts of the case) and the judge may therefore order the parties to produce any evidence which it deems necessary, regardless of whether or not the parties object to such disclosure.

The parties must each produce all evidence in support of their claim. If important documents are not disclosed by the opposing party, or they are held by a third party, the court can (on its own initiative or at a party's request) order those parties to disclose them. If the parties refuse to disclose these documents, or if it is proven that they hid or destroyed such documents, the court may consider the affirmations of the interested parties with regard to those documents as being proven.

After the judge allows the evidence presented by the parties with their written submissions, the parties may agree to engage in a separate evidence production process whereby each party produces the evidence that it considers necessary to determine the litigation. The court supervises the process in the sense that it resolves any objections, incidents or additional requests raised during the production of evidence. This procedure is a faster alternative for the production of evidence, although, in practice, it is rarely used.

**Default judgment**

Failure by a party to respond to a claim does not prevent the judge from awarding judgment. The absence of the defendant is not considered an admission of the claim by the defendant. The claimant still needs to prove its case. The judge is required to consider the merits of the claim before granting the judgment, regardless of the defendant's failure to respond to the claim.

In the event that both parties fail to take steps in the proceedings but neither of them has requested default judgment, the proceedings will be suspended. Default judgments are no different from any other judgments; they are subject to the ordinary and extraordinary means of appeal.

**Appeals**

There are two types of challenges that can be brought against a court decision: ordinary and extraordinary.

As a rule, the interested party can appeal against the first court's decision within 30 days of the communication of the first court's decision.
The appeal will be judged by the superior court. In particular:

- judgments of a Court first instance can be appealed to the Tribunal with territorial jurisdiction;
- judgments of the Tribunals can be appealed to the Court of Appeal with territorial jurisdiction;
- judgments of the Court of Appeal can be appealed to the High Court of Justice.

Provided certain admissibility conditions are fulfilled, the parties may also seek the following extraordinary appeals:

- a second appeal (recourse), which can only be sought in those matters where the law expressly allows it (for example in respect of high value claims) and only where it is alleged that there has been a breach of legal principles or procedural rules;
- a revision of the decision, which can only be permitted when it is expressly provided by the law (for example, when the material object of the judgment no longer exists or the judge, witness or expert of the case have been criminally convicted for criminal acts in relation to that specific case); or
- an annulment of the decision, which can only be sought in cases of certain serious procedural breaches.

The second appeal will be determined by a higher court than the court that rendered the original decision. The revision and the annulment of the decision are determined by the court that issued the decision that the appellant party is seeking to have reviewed or annulled. These extraordinary remedies may be exercised cumulatively (i.e. they are not exclusive of each other).

Typically, the period from filing an appeal until the appeal is determined is around six to nine months.

**Interim relief proceedings**

Interim relief can be granted in order to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the merits of the case is granted. For instance, by means of interim relief, the court will determine the children's situation until a final decision on the divorce of the parents is reached or will suspend the effect of an administrative act until the court will rule on the validity of the act.

As a general rule, interim measures are granted only when the proceedings on the merits of the claim have already been initiated (i.e. there is an ongoing case) or, in cases expressly provided by the law, prior to the initiation of the proceedings.

Legal representation by an attorney is not mandatory in interim relief proceedings. A claim for interim measures has to fulfill the same formal conditions as any other claim in court, but it is not subject to an extensive written phase of the litigation, as the procedure needs to be resolved urgently. The court's decision does not stand as **res judicata** on the substantive claim, so it does not affect the merits of the dispute between the parties.

To obtain the interim relief, the claimant must show that the **prima facie** analysis of the rights is in their favor and that there is urgency for the protective measures to be taken. Conventional representation by an attorney is not mandatory.

An interim relief decision can be obtained typically in two to eight weeks and the appeal phase could last a further two to four weeks. A decision granting or rejecting an interim relief application is only subject to appeal within five days of the decision.

**Prejudgment attachments and freezing orders**

In order to preserve the status quo or to prevent the defendant from trying to dispose of his assets prior to a final judgment, Romanian courts can grant several types of provisional measures. These provisional measures and the interim relief referred to in **Interim relief proceedings** are both special proceedings and have in some ways similarities in that, for example, they have a temporary nature. However, (i) provisional measures ordered to preserve the status quo or to prevent the defendant from trying to dispose of his assets prior to a final judgment; and (ii) interim relief ordered to preserve the claimant's rights, or to prevent irreparable damage to the claimant, until a final decision on the merits of the case is granted, require distinct procedures under Romanian law.

Among the provisional measures that Romanian courts can grant, of the highest importance and utility in practice are the freezing of immovable assets and the freezing of bank accounts. In general, the provisional measures are granted by the same courts that have jurisdiction over the merits of the substantive claim.

Although each measure has individual admissibility conditions, there are several features common to them all:
• the judge has discretion in granting the interim measure, taking into account:
  • the risks associated with delay; and
  • the *prima facie* analysis of the claimant’s right;

• in most cases, the law requires the claimant to deposit a security of a variable amount (up to 20% of the amount of the claim, or, in certain exceptional cases, 50% of the amount of the claim);

• the interested party must produce the proof that the claim on the merits has been filed previously to the filing of the provisional measures request. Accordingly, these provisional measures cannot be requested pre-action; and

• the measures granted by the court are usually for a limited time period, until a final decision is rendered on the merits of the case.

The claimant can request the attachment of any movable or immovable assets belonging to the defendant (with limited exceptions such as personal or domestic use assets which are necessary for the daily living of the defendant or his family, letters, photos, etc.) or the freezing of bank accounts. It is not necessary for the claimant to identify in their request either the assets or the bank accounts.

The procedure is resolved in the first instance without the summoning of the parties. The appeal must be filed within five days of the decision and it is mandatory for the court to summon the parties for the hearing of such appeal. Claimants can be held liable for damage caused to the defendant by the attachment should the court subsequently find that the attachment should not have been granted.

**Costs**

The costs of litigation in Romania include court fees (approximately between 1% and 10% of the value of the claim), fees related to the production of evidence (e.g. expert reports) and lawyers’ fees. As a general rule, court fees are paid by the claimant, fees related to the production of evidence are paid by the party that proposed the evidence, and lawyers’ fees are paid by each party.

The court may order the losing party to cover the opposing party's costs of litigation. If the position of one of the parties is accepted in full, the court can only reduce the amount payable by the losing party for the successful party's lawyers' fees when they are considered disproportionate to the complexity and the value of the case.

**Class actions**

Romanian law does not provide for a special procedure for class actions. Litigation with multiple claimants is possible in specific cases, namely when the object of the claim is a common right or the claimants’ rights have a common cause or at least a close connection. In certain special cases, there are persons that have the right to stand as claimant in the name and on behalf of other persons (e.g. trade unions and consumer associations).

If a court is confronted with multiple claimants, the judge can order them to appoint a common representative. If the claimants fail to appoint a common representative, the court can appoint a representative for them.

**Key contacts**

**Radu Balas**

Partner
DLA Piper Dinu SCA
radu.balas@dlapiper.com
T: +40 372 155 804
Overview of court system

Russia is a civil law jurisdiction and its judicial system consists of three main court branches:

- state commercial (Arbitrazh) courts. These courts resolve commercial, civil and administrative disputes between legal entities or entrepreneurs and have exclusive jurisdiction over certain types of disputes (e.g. corporate and bankruptcy matters). For a creditor of a Russian debtor, proceedings in state commercial courts are usually the preferred option (as compared to litigation in foreign courts or arbitration). The process is reasonably straightforward, fast and cost effective;

- courts of general jurisdiction. These courts adjudicate:
  - civil non-commercial disputes;
  - criminal cases; and
  - administrative cases, which do not arise from commercial activities of companies (e.g. violations of fire safety, labor regulations etc.); and

- constitutional courts. These courts resolve issues regarding the constitutionality of laws and treaties.

The Supreme Court is the highest judicial authority for state commercial courts and courts of general jurisdiction.

Limitation

The standard limitation period for submitting a claim in Russia is three years from the day when the claimant became aware, or should have become aware, of both the violation of its right and who the appropriate respondent is. There are certain shorter limitation periods (e.g. for challenging a voidable transaction).

Procedural steps and timing

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure for commercial disputes in state commercial courts.

There is no requirement for representation by an attorney (i.e. an advocate registered with one of the Russian regional bars) in state commercial courts. However, legislative amendments expected to enter into force by 1 October 2019 will require representatives to have a higher legal education or a degree in law, with some exceptions outlined in the legislation (e.g. for CEOs, patent and trademark attorneys in IP disputes and bankruptcy managers in the performance of their duties in bankruptcy cases).

For certain types of disputes specified by law, including claims for the recovery of funds, a claimant should first send the respondent a mandatory pre-trial demand letter. Generally, 30 days after sending the letter, the claimant may submit a statement of claim with supporting documents to the relevant state commercial court. If there is no requirement to send a pre-trial demand letter, the claimant may submit a statement of claim without the need to engage in pre-trial correspondence.
Usually, the claim is submitted to the court with jurisdiction over the respondent's registered address. Once the claim is registered with the court, the judge has five business days to check whether the documents comply with the procedural rules for initiating proceedings specified by the Arbitrazh Procedure Code of the Russian Federation (i.e., the statement of claim contains all the information required by the Arbitrazh Procedure Code, including information about the subject-matter and parties to the case; all the documents required by the Arbitrazh Procedure Code are attached to the claim, etc.). If the documents are in order, the judge initiates the case and schedules a date for the preliminary (procedural) court hearing. The hearing is usually scheduled for a date one month after the commencement of the proceedings.

At the preliminary hearing, the court schedules a hearing based on merits. It is usual that several hearings take place before a final judgment is made.

In a straightforward case, the proceedings in the court of first instance may take approximately four to six months. However, proceedings may take longer, depending on the court's workload and the case management of the proceedings by the parties.

There are also fast-track procedures whereby the court does not conduct a hearing and will make a ruling based on documentary evidence, these are (i) a court order; and (ii) summary proceedings. Such procedures are applicable to small claims below RUB500,000 (approximately USD7,500) or RUB800,000 (approximately USD12,000) or claims where the respondent had acknowledged its obligations but failed to perform them (e.g., the respondent acknowledged a debt in writing but failed to repay it). Simplified proceedings may take up to ten days (in the case of a court order) or up to two months (in the case of summary proceedings).

 Disclosure and discovery

In Russia, there is no extensive disclosure more typical of common law jurisdictions. Although parties must substantiate their statements with evidence, the parties are free to determine which evidence they would like to use.

The proceedings do not include court-ordered disclosure or discovery as a separate stage. Nonetheless, courts may request additional documents from the parties to the proceedings or third parties. If a party to litigation is unable to obtain the necessary evidence, it may ask the court to order the provision of evidence by another party or third parties (e.g., state authorities, banks, etc.). However, fishing expeditions are not allowed and the requesting party should indicate the following in its application: what specific evidence it seeks; the location of the evidence; relevance to the dispute; and why it cannot obtain such evidence.

State commercial courts favor documentary evidence. While witnesses of fact are admissible, they are rarely used. The parties may provide the court with reports of expert witnesses or ask the court for a court-appointed expert to conduct their expert review.

 Default judgment

All parties are responsible for adhering to the relevant procedural actions and, as such, are expected to be proactive in the proceedings.

If a respondent, who has been duly notified of the proceedings, does not appear at the court hearing on the merits, the court may adopt a judgment in the respondent's absence. The claimant, however, would still need to satisfy its burden of proof and present the necessary evidence to the court.

The respondent is entitled to appeal the judgment in the usual way (see further details under Appeals); however, the respondent cannot submit new evidence to the court of appeal unless it proves that it was unable to do so due to circumstances beyond its control.

If the claimant fails to appear at the court hearing twice without filing a motion to try the case in its absence and the respondent does not require the court to consider the case on its merits, the court may dismiss the claim without consideration.

 Appeals

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure of appeal in state commercial courts.

Generally, a judgment of the state commercial court may be challenged as follows:

- an appeal in the state commercial court of appeal: the parties have one month to appeal a judgment in the court of appeal. The decision will not enter into force until the expiry of such period or until the court of appeal issues its decision. Proceedings in the court of appeal usually range from two to three months;
• a cassation appeal in the state commercial court of a district: once the resolution of the court of appeal is issued, the parties have two months to challenge it at the court of cassation. Usually, proceedings in a court of cassation can take between two to three months;

• a review by the Supreme Court: the Russian Supreme Court is the court of extraordinary instance which deals with major misapplications of substantial and procedural laws by lower courts. Leave is required from a judge of the Supreme Court for a case to be considered, either by:
  • the Economic Collegium of the Supreme Court: second cassation appeal, which may be submitted within two months from the date of the judgment of the state commercial court of a district. The second cassation appeal is aimed to review the substantial violations of law that have affected the outcome of a case;
  • the Presidium of the Supreme Court: supervisory review petition, which may be submitted within three months from the date of judgment of the Supreme Court judge.

Since the Presidium of the Supreme Court is the last appellate instance, it only considers appeals based on extraordinary grounds.

Interim relief proceedings

Interim relief measures aim to secure enforcement of a future judgment and to prevent harm to the subject of the case or to the applicant.

The law does not provide an exhaustive list of injunctive relief. Injunctions may include, for example, freezing monetary assets, securities, rights to real estate and moveable assets of the respondent (for further details see Prejudgment attachments and freezing orders) or prohibiting the respondent or other persons from committing certain actions concerning the subject of the dispute.

An application for injunctive relief may be submitted simultaneously with the statement of claim or in the course of proceedings before the judgment is rendered by the court.

Upon an application by the claimant, a state commercial court may grant injunctive relief sought by the applicant. The court will consider an application no later than the next day after the submission of the application to the court. There is no requirement that the application should be signed by an attorney (advocate).

The court may grant an injunction in circumstances where it finds it appropriate, relevant to the dispute, and necessary to ensure the status quo. An injunction is granted ex parte. The respondent may challenge an injunction within a month from the date of the court ruling granting injunction. Representation by an attorney in interim relief proceedings is not mandatory. However, legislative amendments expected to enter into force by 1 October 2019, will require representatives to have a higher legal education or a degree in law (with some exceptions outlined in the legislation).

In practice, state commercial courts are reluctant to grant injunctive relief.

Prejudgment attachments and freezing orders

Pre-judgment attachments / freezing orders are categories of interim relief intended to secure the assets before the statement of claim is submitted to the court. The respective application may be filed to the court, for example, at the claimant’s registered address, or at the location of monetary assets or other property in respect of which the preliminary relief is requested.

The application should specify the subject-matter of the case, the reason for seeking the preliminary injunction and the relief sought, for example: attachment of respondent’s property or funds in a bank account or transfer of the item in dispute into the custody of the claimant or a third party. The respondent’s money and other assets may be subject to a freezing order.

When submitting such application, the applicant is usually required to also provide counter security (by way of a bank guarantee, deposit etc.) in the amount of the relief sought. A preliminary injunction is granted ex parte and state commercial courts are reluctant to grant preliminary injunctive relief even if sufficient counter security is provided by the applicant.

If the preliminary injunctive relief is granted, the claim on the merits must be submitted to the court within a period set by the court, which will be no more than 15 days, otherwise the injunction will be lifted. If the claim is not brought within the stipulated time period, or the claim is later dismissed on the merits, the claimant will also be liable for the damages of the respondent arising from the injunction.

Costs
The costs of litigation in Russia can be divided, practically speaking, into court fees (state duty, expert fees, etc.) and legal fees.

Court fees tend to be nominal; however, they depend on various factors, such as, the amount of the claim, the nature of claim, and the involvement of experts. State duty ranges between RUB6,000 (approximately USD100) for non-pecuniary claims and a maximum amount of RUB200,000 (approximately USD3,000) for state duty monetary claims.

The party against whom the judgment was made should reimburse the opposing party's court fees. Reimbursement for legal fees is also possible. In practice, however, it is often the case that only a fraction of the actual legal fees is reimbursed.

**Class actions**

In Russia, the concept of class action and the respective procedure varies depending on the court:

**Class actions in state commercial courts**

Although class actions are provided for in the Arbitrazh Procedure Code of the Russian Federation, there are only certain limited circumstances when a class action may be brought in a state commercial court, these being:

- corporate disputes;
- disputes related to activities of the securities market professional participants and
- claims of persons who are parties to the same legal relationship from which the dispute arose (e.g. disputes related to one land plot, claims of bank account holders to the defaulted bank, etc.).

In the above-mentioned cases, a group of persons may join the claimant acting on behalf of the group. At least five persons must join the claim in order for it to qualify as a class action (Article 225.10(2) of the Arbitrazh Procedure Code of the Russian Federation).

The state authorities (e.g. prosecutors or the federal service for protection of consumer rights) and organizations may bring claims “for the protection of the general public” (rather than in the protection of specific individuals).

However, in practice, the above-mentioned types of actions are not widely used in Russia.

**Class actions in courts of general jurisdiction**

From 1 October 2019, individuals will be able to defend their collective interests through class actions in the most common disputes in areas such as consumer protection, labor relations, real estate, shared participation and construction.

A class action may be brought by a selected representative of a group of at least 20 members with a similar claim or, if permitted by law, by another party (such as a public consumer association). Group members can change their representative, for example, if the representative decides to leave the group.

Under the new rules a lawsuit will be considered if all of the following are present:

- The same respondent
- Common or similar claims of persons comprising the group
- Similar factual circumstances
- The same method of protecting violated rights.

Class actions fall under the exclusive jurisdiction of courts at the respondent's registered address in order to prevent forum shopping.

Information on the filing of a class action lawsuit must be published in the media so that new claimants can join the lawsuit.

**Key contacts**
Saudi Arabia

Overview of court system

Saudi Arabia is a civil law jurisdiction that is based on Islamic law, otherwise known as Sharia law. Sharia law, as applied in Saudi Arabia, is not a single codified system of law, nor has it a single code of interpretation in line with Sharia principles. Rather, its laws and principles can vary between the different schools of thought of Islamic law. There are four major schools: Hanbali, Hanafi, Shafi'I, and Maliki, and Saudi courts and judicial committees generally apply the interpretation of the Hanbali School. The Saudi government, from time to time, issues laws, rules, and regulations with the objective of supplementing Islamic law. In the event of a conflict between Islamic law and government rules and regulations, Islamic law will generally prevail. Sharia law applies in relation to civil and non-codified criminal matters. Other aspects of law, such as commerce, government matters, finance, labour and investment are governed by several statutes and codes.

Saudi Arabia does not have a system of binding judicial precedents, meaning that the courts do not have to follow the earlier decisions of other courts or authorities. Judicial precedents are merely persuasive sources rather than being binding on judges or arbitrations when making their decisions. Therefore, a very broad discretion is given to judges and arbitrators to state, interpret, and apply the principles of Sharia law, rather than considering one single codified law. There is also no comprehensive system of reporting cases in Saudi Arabia. However, the Saudi judiciary publishes from time to time “judicial principles” that may operate as authoritative rules to be followed by judges in concluding their judgments.

All proceedings are conducted in Arabic and all non-Arabic documents must be translated.

The court structure in Saudi Arabia is divided into two main branches:

- first, there is the public judiciary which is supervised by the Supreme Judicial Council. The public judiciary includes: (i) First Instance Courts; (ii) The Court of Appeal; and (iii) the Supreme Court. The Supreme Court is not yet fully functional and therefore it is not currently reviewing all types of cases. To date, it is only reviewing commercial cases and serious criminal cases, carrying severe sentences (e.g. death penalty). The First Instance Courts are divided into sub-categories of specialist court which include the General Courts, Commercial Courts, Penal Courts, Labour Courts and Personal Status Courts.

- secondly, there is the administrative judiciary (Board of Grievances). This includes: (i) First Instance Administrative Courts; (ii) Courts of Administrative Appeal; and (iii) the Administrative Supreme Court. These courts include Disciplinary Circuits and Administrative Circuits.

Alongside the two main judicial branches, there is also a semi-judicial branch which examines specific specialized disputes. These consist of various judicial committees within government ministries, such as:

- the Committees for Resolution of Securities Disputes;
- the Zakat & Tax Dispute Committee; and
- the Banking Disputes Settlement Committee.

Limitation
In general, limitation periods for civil claims are not applied in Saudi courts, as under Sharia law, a right to claim is not waived due to the passage of time. However, there are some exceptions where certain laws impose limitation periods such as the Commercial Maritime Law, Board of Grievances Law and Labour Law.

**Procedural steps and timing**

In the public judiciary branch, the claimant should initiate proceedings by filing a claim online through the Ministry of Justice's website. This must state the nature of the claim, the demands, and list the supporting documents that will be provided. All documents must be in Arabic. Usually, once an application is submitted, the court will take up to three weeks to review the application. The court will review the application to ensure all information and documents are provided. Once confirmed, the claimant must then visit the court within ten days to confirm the filing of the claim and have the case referred to a judicial circuit. The claimant will also receive the hearing date which will usually be between two weeks and three months of this visit to court. The court will then summons the defendant through the Summons Department which has started to use electronic methods, or alternatively the claimant can summon the defendant in person or through the post office. The time between each hearing session varies from case to case but, generally speaking, parties can expect there to be one or two months between each hearing for real estate cases, two to four weeks for family and criminal cases, and three to six weeks for commercial cases. When the court makes a decision, both parties must hear the judgment and they will then receive copies of the judgment in writing. Parties may appeal the judgment, however this must be done within 30 days.

In Saudi courts, the parties must either attend the hearings and represent themselves, or authorize individuals or attorneys to attend on their behalf and represent them (provided that an official notarized power of attorney is obtained). Representation by an attorney is therefore not mandatory in Saudi courts, all individuals have the right to defend themselves without the need to appoint an attorney or representative.

**Disclosure and discovery**

Disclosure and discovery in Saudi Arabia is more akin to other civil law jurisdictions, and therefore differs from the approach taken in Anglo-Saxon jurisdictions. Sharia law requires the claimant to prove their claim rather than obliging the defendant to disclose or build evidence. A judge may ask either party to disclose documents, but this request is not in the form of an order that implicates penalties in case of non-cooperation.

The claimant may submit any form of evidence. However, evidence under Sharia law is divided into different categories and levels. The judge has the right to decide whether disclosure or evidence will be accepted or not.

**Default judgment**

If (i) the defendant or their representative is notified of the date of the hearing; (ii) the defendant or their representative gives the court a memorandum of defence prior to the scheduled hearing of the case; or (iii) the defendant appears at any of the hearings and then fails to appear again, the court shall rule on the case and the judgment shall not be deemed “in absentia” with respect to the defendant.

If the defendant or their representative is not notified of the date of the first hearing and the defendant fails to appear, the first hearing shall be postponed to a subsequent hearing of which the defendant shall be notified. If the defendant fails to appear again and again they were not notified directly, the court shall rule on the case and its judgment shall be considered “in absentia” with respect to the defendant.

The defendant has the right to appeal to the Court of Appeal within 30 days from the date of notifying the defendant of such a judgment.

**Appeals**

There are First Instance Courts in almost all the provinces and cities in Saudi Arabia in order to facilitate the conduct of proceedings for individuals. Courts of Appeal are located in all the 13 provinces in Saudi Arabia. The Supreme Court is based in Riyadh.

A judgment of the First Instance Court can be appealed within 30 days from the date the written judgment is issued (which is usually different from the date of the final hearing at which the parties are informed of the judgment). If none of the parties appeal, the judgment becomes final after 30 days. All judgments accepted by both parties become final immediately.

In practice, the appeal court may take up to three months to review the case and make a decision.
Interim relief proceedings

In Saudi Arabia, interim relief proceedings are referred to as “summary cases”, and the requests made under such proceedings are referred to as “summary requests”. The court with jurisdiction over the subject matter of the main dispute has jurisdiction to grant interim measures in respect of urgent matters related to the main dispute, where the lapse of time may cause an irreparable harm. Types of interim measures include (as stated under Article 206 of the Civil Procedures Law):

- cases of inspection to establish a condition (these are cases where the judge is required to inspect the condition of an asset so, for example, a judge may visit and inspect a property to provide an official monetary valuation of the real estate at that particular time);
- cases of an injunction banning travel;
- cases of an injunction banning interference with possession and recovery of possession;
- cases of suspension of new actions;
- cases requesting receivership;
- cases relating to daily wages; and
- other cases deemed urgent by law.

By law, if a summary request is sought before the main action has been commenced, a judgment on these urgent matters should always be followed by a claim on the merits. In practice, the claimant usually files the main case and then subsequently files the request for a judgment on urgent related matters. The hearing for a summary request shall be within 24 hours from submitting the request, however in practice it may take longer. The law does not specify a maximum period through which a decision on the summary request should be issued.

The party can appeal the interim relief judgment within 10 days of the notification of the judgement to the parties.

As in ordinary proceedings before the Saudi courts, representation by an attorney in these urgent related matters is not mandatory. Every individual has the right to defend themselves without the need to appoint an attorney or legal representative.

The claimant is required to provide a financial guarantee to the court in case the claim proves to be incorrect. The amount for any guarantee is subject to the judge’s discretion.

Prejudgment attachments and freezing orders

Saudi law does not explicitly categorise prejudgment attachments, such as freezing orders, as a type of interim relief. However, Saudi law gives judges a wide discretion as to what can be granted as interim relief, subject to the conditions listed under the Enforcement Law, which completes and supplements the application of the Civil Procedures Law. In the circumstances, (i) when the debtor has no established residence in the Kingdom; or (ii) when there is a risk of dissipation of assets, a claimant may make an application to the judge hearing the main claim, asking the judge to attach or freeze a defendant’s asset(s). Such application may be made during the consideration of the main claim, or immediately before proceedings are commenced. However, it is extremely rare for this type of application to be made before the judge hearing the main claim.

In practice, attachments are ordered by the enforcement courts. In other words, in circumstances (i) and (ii) referred to in the preceding paragraph, Saudi judges usually seek to expedite the main proceedings and provide a final judgment as quickly as possible. Accordingly, claimants usually first establish their claims and obtain a judgement on the merits, and then they seek to attach or freeze the defendant’s assets before the enforcement courts. As per the Enforcement law, the enforcement judge would most likely entrust the defendants with the custody of the attached assets on the condition of providing a guarantee or solvent guarantor. If the defendant refuses to retain the attached assets under their custody, or fails to provide a security or guarantor, the judge shall appoint a certified guardian to keep the attached assets under his / her custody.

According to the Enforcement Law, all of the debtor’s assets shall guarantee their debts. However, attachment of the debtor’s assets shall not apply to the following:

- assets that are owned by the Kingdom;
- the residence of the debtor and their dependents, unless it is pledged to the creditors;
• means of transport of the debtor and their dependents, unless it is pledged to the creditors;

• wages and salaries, except for:
  • one-half of the total wage or salary in order to pay the alimony and child support; or
  • one-third of the total wage or salary in order to pay for other debts;

• tools necessary for the debtor to practice their profession; and

• in relation to the debtor's personal items, the judge will decide which items would be considered adequate for the debtor.

Costs

There are no charges for filing or appealing a claim in any Saudi court at the date of writing this report. Generally, each party bears its own lawyers' fees. However, it is possible to claim reimbursement of a party's legal fees, and it is under the judge's discretion to award the amount they see fit or to reject the claim.

Class actions

Generally speaking, class actions in Saudi Arabia are only permitted in respect of securities litigation pursued before a quasi-judicial authority that determines securities disputes, the Committee for Resolution of Securities Disputes (the "Committee"). For an applicant to submit a request for a class action, they must meet two requirements:

• the request shall demonstrate that the suit is identical to other potential or existing disputes "in terms of legal bases, merits and the subject matter of the claim"; and

• the request shall demonstrate that the decision of the Committee on the subject matter of the claim may have an effect on other potential or existing disputes.

Any interested party can submit a request for a class action to the Committee which shall make a decision as to whether to accept the filing of a class action within 30 days of its submission.

Once a class action application is approved and announced, the class action record will be made available to the public. The Committee certifies the class action once a minimum of 10 requests is reached within a period of 90 days from the announcement of the first request.

Key contacts

Amer Abdulaziz Al-Amr
Partner
Amer Al Amr Law Firm
amer.alamr@dlapiper.com
T: +966 11 201 8977
Overview of court system

Spain is a civil law jurisdiction with numerous courts. In broad terms, the civil court system is divided into the following:

- first instance courts, courts of peace and certain specialized courts (including commercial courts);
- provincial courts, which hear appeals filed against the judgments of the first instance and commercial courts; and
  - either:
    - High Courts of Justice, which have jurisdiction over appeals filed against the judgments of Provincial Courts on applicable regional civil law (e.g. High Court of Justice of Catalonia hears appeals from the Provincial Courts in Catalonia on matters relating to Catalan civil law); or
    - the First Chamber of the Supreme Court, which hears appeals from the Provincial Courts in cases of national civil law.

Limitation

According to the Civil Code of Spain, personal actions for which there is no specific statutory limitation will become time barred after five years from the date on which fulfillment of the obligation can be demanded. While a 5-year limitation period is the default position, the Civil Code also establishes other limitation periods (e.g. a 1-year limitation for civil tort liability; a 20-year limitation for foreclosure of a mortgage; and a 4-year limitation for an action for annulment).

Procedural steps and timing

In most legal proceedings in Spain it is mandatory that a party be defended by a lawyer and represented by a legal representative (procurador de los tribunales). The legal representative serves as a liaison between the lawyer, the client and the court and files pleadings and other documents, receives court orders and generally checks on the status of the proceedings.

Ordinary proceedings (juicio ordinario) are the most common civil proceedings in Spain as they are used for claims that exceed EUR6,000 and those where the economic interests cannot be calculated. Such proceedings are initiated by the plaintiff issuing a claim form (demanda) that states the facts and allegations and provides all of the documents (including expert reports) on which the claim is based.

The service of a claim form on the defendant is performed by the court but can also be carried out by the legal representative, at the request of the claimant. The defendant has a period of 20 working days to file the defense, following which the court will call the parties to a preliminary hearing (audiencia previa). The parties attend the preliminary hearing with their legal representative and lawyer.

At the preliminary hearing, the judge will ask the parties whether it is possible to settle the dispute. If it is not, the judge will:

- resolve any procedural issues raised by the parties;
- give the parties the opportunity to raise additional arguments that do not change the subject of the dispute or that clarify the pleading;
hear the parties' challenges to the documentary evidence proposed by the opposing party;
request that the parties establish the facts under dispute;
decide on the admission of and any challenges to the evidence to be produced at the oral hearing; and
set a date for the oral hearing.

The purpose of the oral hearing is to: (i) enable the court to examine the evidence given by the parties, the witnesses and the experts; and (ii) as appropriate, examine other types of evidence including documents, images and sounds. Once the evidence has been given at the oral hearing, conclusions will be drawn from it by the lawyers and presented to the court in their closing arguments. The judgment (sentencia) is given in writing by the judge.

Proceedings usually follow the below timeline:

- filing of the claim form;
- the relevant court will issue a notice accepting the claim within approximately one to one and a half months;
- service of the claim form;
- 20 working days for the defendant to file a defense and any counterclaim;
- preliminary hearing within approximately three to 6 months of the filing of the defense;
- oral hearing within approximately 6 to 12 months of the preliminary oral hearing; and
- judgment delivered within approximately 1 to 3 months of the oral hearing.

The timing for the entire proceedings is heavily influenced by the court's workload. However, the time from service of the claim form on the defendant to obtaining a judgment should not exceed 12 months in straightforward civil lawsuits and other simple cases.

**Disclosure and discovery**

In Spain, parties substantiate their claims with the evidence they choose to use. Judges are likely to reject a party's request for general, non-specific discovery. However, a party may request the judge to order (or the court on its own volition may order) the opposing party to submit certain documents or produce evidence. The submission of documents can only be requested during legal proceedings. The procedure, if ordered by the court, is expressly not intended to facilitate fishing expeditions. The party requesting disclosure should have a legitimate interest in such disclosure and the request should cover a narrowly defined group of documents.

It is also possible for the court, at its own discretion, to give an interim judgment asking the party to submit certain additional evidence which the court considers essential for the case.

**Default judgment**

If the defendant fails to appear before the court, it will be declared to be in default. However, the claimant cannot then automatically apply for a default judgment or a summary judgment. The proceedings will continue in the defendant's absence and, in order for the claimant to succeed, it will need to prove the basis for its claim.

The defendant in default may only appeal the judgment rendered in its absence when there has been a breach of procedure or, in proceedings before the Provincial Court, because (i) there has been an incorrect interpretation or application of the law, or (ii) judgment was obtained in a proceeding that did not comply with the required formalities. The term to lodge such appeal is 20 working days:

- from the notification of the judgment to the defendant in default if it had been personally notified of the judgment; or
- from the day after the publication of the judgment in the official gazette if the defendant in default had not been personally notified of the judgment.

**Appeals**

The parties have the right to file an appeal against the judgments entered at first instance within 20 working days of the notification of the
first instance judgment. The competent court to hear the appeal is the corresponding Provincial Court (Audiencia Provincial). The court will be formed of a panel of three judges and will have the opportunity to review everything done in the lower court. The timeframe in which appeals are resolved by the Provincial Court varies, ranging from 6 to 18 months.

The judgment issued by the Provincial Court may also be subject to an extraordinary appeal. Appeals may be made for breaches of procedure (recurso extraordinario por infracción procesal) or incorrect interpretation or application of the law or when a judgment has been obtained in a proceeding that has not complied with the required formalities (appeal in cassation / recurso de casación). These extraordinary appeals must be filed before the Provincial Court which issued the relevant judgment within 20 working days of notification of the judgment to the relevant party. Such appeals will be heard by the High Court of Justice of the relevant region, when the applicable law is the regional civil law, and the First Chamber of the Supreme Court (Sala Primera del Tribunal Supremo), when the applicable law is national civil law.

The appeal in cassation is limited to cases where: (i) the amount claimed exceeds EUR600,000; (ii) the decision is contrary to the settled case law of the Supreme Court; or (iii) the judgment of the Provincial Court is issued to provide civil judicial protection of fundamental rights.

The timeframe in which the Supreme Court resolves extraordinary appeals ranges between 18 and 24 months.

**Interim relief proceedings**

In Spain, interim relief proceedings can be brought where such relief is necessary to ensure enforcement of a future judgment.

The interim measures that can be granted primarily include:

- injunctions (i.e. an order requiring a party to do or not to do something);
- preventive freezing orders;
- interventions or court-ordered receiverships of productive assets;
- deposits of moveable assets;
- preparing inventories of assets in accordance with conditions to be specified by the court;
- precautionary registry entries of the claim in the Public Registry;
- court orders to provisionally cease an activity; and
- suspensions of contested corporate resolutions.

There is no informal way to obtain interim relief. An application must be filed in writing before the court with jurisdiction to deal with the main claim.

In order to be successful, an applicant seeking the interim relief must satisfy each of the following requirements:

- provide the particulars, arguments and documentary evidence allowing the court to justify, without prejudging the merits of the case, a provisional and circumstantial judgment in favor of the applicant's claim (appearance of good a good claim or fumus boni iuris);
- prove that, if the requested measures are not adopted before the judgment is issued, there is a real risk that any judgment in favor of the applicant would be defeated or prejudiced (risk in procedural delay or periculum in mora); and
- offer security to the court in order to compensate the respondent and related third parties (in a speedy and effective manner) for loss if it is found that the freezing order was wrongly granted.

It is difficult to estimate the timeframe for interim relief proceedings. Non-urgent interim relief proceedings can range between one to six months, but in urgent *ex parte* proceedings, interim relief can be granted in a matter of days (depending on the courts' workload).

Interim relief orders are usually granted by first instance courts. Appeals against such orders are resolved by Provincial Courts in a timeframe ranging between 6 and 18 months.

**Prejudgment attachments and freezing orders**
Prejudgment attachments and freezing orders are types of interim relief. They can be applied for both before and during the proceedings. An application for a prejudgment attachment or freezing order should be made before the court that will be competent to hear the dispute once proceedings are commenced, or before the court hearing the dispute in the event that the freezing order is sought during the proceedings.

These measures are initiated by the plaintiff (or future plaintiff) in the main proceedings. In principle, the court is required to hear both parties. However, if there is urgency and there is a risk that the property to which the attachment / freezing order relates may disappear before the court can hear the parties, the court will make its decision without hearing the debtor (in absentia or ex parte). It is mandatory for parties to be assisted in the hearing by a lawyer and legal representative (procurador de los tribunales).

In order to be successful, an applicant seeking a prejudgment attachment / freezing order will need to satisfy the criteria for granting interim measures referred to in Interim relief proceedings, briefly: (i) appearance of a good claim; (ii) risk of irreparable harm if the granting prejudgment of the attachment / freezing order is delayed; and (iii) offer of security to the court. The assets that can be attached by way of a prejudgment attachment or freezing order are: money or bank accounts of any kind; credits; securities or other financial instruments; immoveable assets or remuneration; and pensions and income from self-employed professional and commercial activities.

Where prejudgment attachments and freezing orders are requested before issuing the claim, the party requesting the relief must plead and prove urgency or necessity. Pre-action measures will become void if the main claim is not brought before the same court within 20 days of granting such pre-action relief.

If the claimant is eventually unsuccessful in its claim or the court later finds that the prejudgment attachment or freezing order was granted wrongly, it could be held liable for any damages caused to the debtor by the prejudgment attachment or freezing order.

**Costs**

The costs of the proceedings comprise of the court fees for litigation, lawyers’ fees, the fees of the legal representative and any fees incurred by experts (where relevant).

Each party is liable for the expenses and costs of the proceedings incurred at its request, which might include:

- those disbursements which originate directly from, or are immediately rooted in, the existence of the proceedings; and
- the party's costs relating to the payment of the fees of lawyers and legal representatives or deposits required for the submission of appeals (for example, the deposit for filing an appeal is EUR50).

The deposit and court fees for litigation are mandatory, fixed by law and payable when the claimant files its claim form. The amount of court fees varies depending on the type of proceeding and ranges between EUR150 and EUR1,200. The fee for ordinary proceedings is EUR300. Court fees are not usually reimbursed.

Court fees are fixed and must be paid for going to court and making use of the public service of the administration of justice though there are some exemptions (e.g. in cases which involve a decision in respect of fundamental rights). The events triggering the payment of a court fee in civil cases include:

- commencing a civil claim or enforcement proceedings in respect of an out-of-court settlement; or
- filing a counterclaim.

**Class actions**

In Spain, a judge will consolidate claims where they refer to: (i) the same judgment; (ii) the same defendant; and (iii) the same facts. Where this is done, only one judgment will be provided. The parties will, however, be able to appeal the consolidated judgment individually.

With regards to the rights and interests of consumers and end-users, the legally constituted associations of such consumers and end-users shall have authority in court to defend:

- the rights and interests of the associations and their members; and
- the general interests of consumers and users.

When the aggrieved consumers or end-users can be easily identified, the parties with authority to act as claimants in the proceedings are:
• the associations of consumers and end-users;
• the entities legally constituted for the purpose of representing aggrieved consumers or end-users; and
• the aggrieved groups.

Where the aggrieved consumers cannot be easily identified, the parties with authority to act as claimants in the proceedings are exclusively those associations of consumers and end-users who can legally hold such representation.

**Key contacts**

**Borja de Obeso**  
Partner  
DLA Piper Spain S.L.U.  
borja.deobeso@dlapiper.com  
T: +34 91 319 1212
Overview of court system

Sweden has a civil law tradition. There are three levels of civil courts in Sweden:

- District Courts;
- Courts of Appeal; and
- the Supreme Court.

Which District Court has jurisdiction to hear a dispute usually depends on the domicile of the defendant, but other criteria may apply depending on the type of dispute (e.g. in real estate disputes and consumer disputes).

Limitation

Should a party wish to commence proceedings in Sweden, it must bear in mind that a claim must be filed within the general ten-year statutory limit, except for business to consumer claims, which must be filed within two years. The time limit can be renewed by service of notification of the debt, service of application of summons or enforcement measures.

Procedural steps and timing

A typical civil lawsuit in Sweden starts with the claimant’s summons application. The summons application must contain the claimant’s requests for relief and the legal grounds to support them. It should also include a preliminary statement of evidence but, in practice, claimants are permitted to submit the statement of evidence once the matters in dispute have been clarified further to avoid unnecessary litigation costs.

A writ of summons is then issued by the court and served on the defendant. The defendant is normally granted two weeks for filing its statement of defense. Depending on the nature and complexity of the case, the court may request further clarification and/or elaboration from the parties in writing, usually within two weeks for each submission, and a preliminary court hearing is scheduled within a few months (although, in practice, the time may vary considerably depending on the court’s workload). The main purposes of the preliminary hearing are to fix a timetable for the remainder of the case and to focus the case on the issues in dispute to avoid unnecessary evidence and pleadings. The judge also has a statutory obligation to try to settle the dispute, which is a fairly common outcome of preliminary hearings. After the hearing, the court will request the parties to submit their final statements of evidence and the main hearing is scheduled.

In a straightforward civil lawsuit, the time from serving the writ until the preliminary hearing will be 3 to 6 months, and the main hearing will usually be held in approximately 12 to 18 months. The judgment is handed down within a few weeks of the main hearing. The proceedings can, of course, be far lengthier if the case is complicated.

Legal representation is not mandatory in civil cases. Where parties are represented, it is not necessary for counsel to be admitted to the Swedish bar or even to hold a law degree to be allowed to appear.
Disclosure and discovery

In Sweden, the parties must present evidence to substantiate their claims but are free to determine which evidence they want to rely on. Practically everything is admissible and will be evaluated freely by the court, which will also decide the weight to give to each piece of evidence. The court will typically make no investigations of its own or assess evidence other than that which the parties have presented.

It is possible to request documents to be produced by the other party or third parties, but fishing expeditions are not permitted. The requesting party should identify the specific documents – or a narrowly defined category of documents – it is seeking and it must have a legitimate interest in seeking them. Furthermore, the applicant must show that the requested documents are relevant to the matter in dispute. The request is not limited to hard copy documents and can entail any (electronic) device holding information. After hearing the opposing party, the court will decide on the request. Attorneys and certain other professionals may refuse disclosure on the grounds of protecting legal professional privilege, and documents containing trade secrets may also be exempt from being disclosed. The court may only order a party to produce documents when they are requested by the other party, and thus a document production order cannot emanate from the court's discretion.

Default judgment

If a defendant fails to appear in the proceedings in person or through an attorney, the claimant may be awarded a default judgment. In the default judgment, the court will award the relief sought by the plaintiff in the statement of claim, unless the relief in question is evidently unfounded.

A defendant confronted with a default judgment has the option to object within one month to the court that has rendered the default judgment, in which case the matter will be re-opened.

Appeals

If a party wishes to appeal a judgment of a District Court, the party is required to seek leave to appeal from the Court of Appeal. The timeframe to request such leave is three weeks from the date of the District Court’s judgment. After that timeframe, only extraordinary grounds for appeal are allowed. There are three such extraordinary grounds under Swedish law, namely if:

- a new trial is possible due to new evidence becoming available which could not have been brought in the first trial;
- the party for some extraordinary reason was unable to file an appeal within the stipulated time; and
- if the appellant alleges a serious procedural error.

The three grounds may all lead to an overruling of a judgment that has entered into legal force. It is, however, very rarely seen in Swedish civil law cases. The timeframe in which the Court of Appeal usually resolves appeals of District Court judgments is usually about 12 months.

The Supreme Court generally only deals with legal precedents (i.e. when it is deemed important to establish a precedent for the lower courts), and it is necessary to obtain leave to appeal in the Supreme Court. Leave to appeal must be sought within four weeks of the date of the Court of Appeal’s judgment. The Supreme Court usually decides on leave to appeal within 3 to 4 months and resolves the appeal within 6 to 24 months of granting leave to appeal.

Interim relief proceedings

The Swedish judicial procedure provides tools to obtain interim relief. The (prospective) claimant may request interim relief during or prior to the initiation of substantive proceedings. The type of relief that may be granted will depend on the measures that are required to secure the claimant's interests until the case is decided. The most common types of interim relief are attachment or freezing of assets (for further detail see Prejudgment attachments and freezing orders) or prohibition to perform certain actions i.e. breach a non-compete clause.

Prerequisites for obtaining interim relief are:

- that the claimant can show that the claims have reasonable merit;
- that the relief sought would be in jeopardy unless the measure is granted; and
• that the claimant can provide sufficient collateral for the possible damage caused by the interim relief.

If the court is satisfied that the prerequisites are met, the relief can be granted before the defendant has been served. If the relief sought is granted, the claimant must initiate the proceedings or arbitration within one month.

A claim for interim relief may be granted within a day, and no later than within a week of filing the application for interim relief. The defendant may appeal against an interim relief judgment within three weeks. As in almost all Swedish court proceedings, representation by an attorney is not mandatory.

Prejudgment attachments and freezing orders

In Sweden, prejudgment attachments / freezing orders are types of interim relief. A request to attach / freeze assets of a debtor should be filed in the court that will hear the substantive claim (or is hearing the substantive claim if the request is made while the proceedings are pending). All assets that may be subject to enforcement (for example, immovable and moveable assets, claims on third parties and shares) may be attached or frozen.

The judge will assess whether the evidence prima facie supports the creditor's claims and may decide not to hear the debtor's response before granting the measure (i.e. the measures may be granted ex parte) if there is a risk that the property will be disposed of in the meantime. A prejudgment attachment must be followed by a claim on the merits within one month, otherwise the attachment will be lifted. The creditor can be held liable for damage inflicted on the debtor by the attachment.

Costs

Court fees are low in Sweden (about EUR300). Payment of this court fee is made by claim, meaning that it will need to be paid once:

• by the claimant when filing the writ of summons; and
• by the defendant when (and if) filing a counterclaim.

Aside from the court fee for application, there are no more fees to the court in civil proceedings.

In terms of recovery of attorney fees and other disbursements the losing party will usually have to pay all of its own costs and the reasonable costs incurred by the opposite party. If the parties are successful and unsuccessful on different issues of the case, the court may order them to cover the costs pro rata in accordance with their relative success, or carry their own costs.

Class actions

In Sweden, class actions are heard by 21 designated District Courts, with at least one located in each county. Class actions based on environmental law are examined by one of the five District Courts that are designated as environmental courts. Disputes between consumers and business operators can be brought as group actions by the Consumer Ombudsman before the National Board for Consumer Disputes.

A class action may be filed by private individuals, organizations (in respect of consumer law or environmental law matters) and public entities such as the Consumer Ombudsman or the Environmental Protection Agency.

The prerequisites for initiating a class action include:

• that the group can be identified and defined;
• that the action is based on circumstances that are common for all the members of the group; and
• that a class action is appropriate.

There is no minimum number of claimants required before a group action can be brought. If the court finds that all of the above conditions are satisfied, the action will proceed as a group action under the Group Proceedings Act. Otherwise, the court will dismiss the action.

Key contacts
Overview of court system

Unlike other jurisdictions in Southeast Asia, Thailand is a civil law jurisdiction. It has a three-tier court system, being (in order of seniority):

- the Court of First Instance;
- the Court of Appeal (including a Court of Appeal for Specialized Cases);
- the Supreme Court.

There are additional specialist courts, such as:

- the Administrative Court;
- the Military Court; and
- the Constitutional Court.

There is no system of precedent in Thailand, although Supreme Court judgments are often persuasive.

Limitation

The Thai Civil Procedure Code prescribes limitation periods for the filing of cases, which vary according to the nature of the issues in dispute and the related law. The most commonly applicable limitation periods include:

- one year for negligence and wrongful act claims, starting from the date on which the loss and the identity of the tortfeasor becomes known (up to a maximum of ten years from the date of the loss); and
- ten years from the date of breach for general commercial contracts.

Where there is no specific limitation period, a general ten-year limit applies from the date the cause of action arises.

Procedural steps and timing

Before commencing proceedings, the claimant should send to the defendant a formal demand letter. While this is not always a mandatory requirement, it is accepted practice.

The claimant’s lawyer files a complaint, often known in other jurisdictions as a Statement of Claim, in the prescribed form to the court. The complaint must contain the name of the court and the names of the parties, together with details of the facts and allegations forming the basis of the claim. It does not need to contain all details and full particulars of the claim, provided there is sufficient information for the defendant to be able to respond to the claim and all facts on which the claimant wishes to rely on in later trial hearings are included. A Power of Attorney and / or a lawyer appointment deed is required to admit legal counsel on a case. Although it is not mandatory, it is common practice to instruct legal counsel in Thai litigation proceedings.
Subject to the acceptance of the complaint, the court office will serve the court summons and a copy of the complaint to the defendant. The estimated time for service is usually within one to two months of filing the claim. In cases where the defendant is located overseas, the summons service will be initiated through diplomatic channels, and will usually take 6 to 12 months.

The defendant may accept service of the proceedings by signing the court summons. In such circumstances they have 15 days from the date of service to submit a defense and / or counterclaim. In the event that the defendant does not sign the court summons, it is usually posted to the address of the defendant, who will have 30 days to submit a defense and / or counterclaim. The time permitted for filing a defense in consumer and labor cases will be different. Neither the court nor the defendant will serve the defense on the claimant, and therefore it is the duty of the claimant's lawyers to check with the court as to whether a defense has been filed with the court, and to request a copy.

A case management hearing generally takes place between 60 and 90 days after the Statement of Claim has been filed in court. Written witness statements are usually not submitted unless agreed upon by the parties and the court. The time between the initial hearing, which determines the issues in dispute, and the date of the final hearing can vary from 4 months to 18 months, depending on the court's schedule.

Closing statements are not mandatory and a judgment will still be handed down in cases where a party does not file a closing statement. The court issues a judgment, usually within one to two months of the end of the trial or the deadline for the submission of closing statements (if one has been provided). The first instance court process generally takes 12 to 18 months from filing the initial claim to judgment.

Parties can apply for extensions of time and request adjournments of hearings upon application to the court, which may be granted provided there is a reasonable explanation for the need for the extension or adjournment. Although not mandatory, the court encourages parties to participate in mediation.

Where the judgment concerns a monetary amount, the unsuccessful party must satisfy the judgment upon receipt of the enforcement order within the period prescribed in such order (generally within 30 days). Regardless of whether all parties attend the judgment hearing, the enforcement order will be issued on the same day.

If the prescribed enforcement period has lapsed, the successful party must file an application with the court for a writ of execution and for the court to appoint an execution officer (bailiff). Upon receipt, the bailiff will serve the writ of execution on the debtor, after which the bailiff will attach the debtor's assets and liquidate them at auction, depending on the type of asset.

**Disclosure and discovery**

There is no discovery or disclosure process under Thai law. However, if one of the parties is aware of a specific document that the opposing party has in its possession that is relevant to the proceedings, it can apply for and obtain a subpoena from the court for that specific document.

The party applying for the document request must show that the specific document relates to the issue in dispute. The court will often require the applicant to provide the title and subject matter of the document and its date of issue.

The court may also order a party to adduce a specific document at its discretion.

**Default judgment**

A party may file for a default judgment if the defense is not filed within the prescribed deadline. The defendant has 15 days from the date of the default judgment to object and request a retrial.

**Appeals**

The Court of First Instance is an umbrella term for the trial courts that conduct the original trials and render the first decision. A party may appeal a Court of First Instance judgment to the Court of Appeal within one month of the judgment being issued.

To appeal to the Court of Appeal, an applicant must satisfy the following conditions:

- the claim must have a value of THB50,000 or more (unless the Court of First Instance has indicated that there should be a right of appeal regardless); and
• no new evidence or arguments can be submitted at the appeal stage, unless the matter concerns public order.

A judgment of the Court of Appeal is usually final but permission to appeal to the Supreme Court can be obtained. An application for such permission should be made within one month of the decision being handed down by the Court of Appeal.

The Supreme Court may accept an appeal if they are satisfied that the appeal raises a significant question for the court to consider, including if:

• the question is one involving public interest or public order; or
• the question should be answered in order to improve the interpretation of the law.

The Civil Procedure Code does not prescribe a specific timeframe for the Court of Appeal or Supreme Court to render decisions. In practice, the appellate courts would take at least six months from the submission of all pleadings to consider an appeal. It is not uncommon for the Supreme Court to take more than two years to consider an appeal.

Consumer protection legislation, however, provides that the Court of Appeal should render its decision in consumer cases within a year from the submission of all pleadings.

**Interim relief proceedings**

Interim orders may be granted by the court. These orders include: restraining orders, possessory orders and orders requiring government agencies to suspend or revoke administrative decisions. Search orders are not available for civil proceedings.

A party may file an application for interim relief before, during or after the judgment (pending execution).

A party may also file for emergency relief which is considered on an ex parte basis. If accepted, the court will consider and determine the application on the same day. The Thai courts impose a high threshold to obtain an emergency injunction. An applicant will need to prove the following:

• an imminent threat of serious harm;
• the likelihood of success of challenging the merits of the claim, against which the emergency application is being sought; and
• that the respondent has no or limited assets in Thailand against which the applicant may seek to eventually enforce a judgment, once the case is concluded.

The respondent may file an appeal against an emergency injunction at the Court of First Instance within 30 days from when the injunction was first granted.

It is not mandatory for parties to seek legal representation in interim relief proceedings. In practice, however, it is very common for legal counsel to be instructed.

**Prejudgment attachments and freezing orders**

The prejudgment attachments and freezing orders are categories of interim relief. A claimant is entitled to file, with its complaint or at any time before judgment, an ex parte application requesting the court for an attachment order. The claimant must file such a request at the same Court of First Instance that it filed its complaint at.

Any objects / assets can be attached, including (without limitation): immovable and movable assets, IP rights, claims on third parties and company shares.

The court must generally be satisfied that:

• the claimant has a fair and reasonable cause and sufficient grounds for applying for the protective measures; and
• the defendant intends to remove the whole or part of the property in dispute from the jurisdiction of the court, or transfer, sell or dispose of such property, in order to delay or obstruct the execution of any order made against it or in order to prejudice the claimant.

The court may also grant such an order on any other ground that it thinks is fair and reasonable.
The request for a prejudgment attachment and freezing order will need to be made in parallel with the claim on merits.

The applicant of an attachment order can be liable for any damages caused to the defendant by the attachment on the following grounds:

- the applicant is unsuccessful and had misled the court into believing that its application had merit; or
- regardless of whether the applicant is successful or not, it misled the court into believing it had satisfied the grounds to request for interim relief.

**Costs**

A fee must be paid to the court by the claimant to file a claim. The fee is calculated as a percentage of the claim value: 2% of the first THB50 million, up to a maximum of THB200,000, and 0.1% on any amount above that figure. Most fees can now be paid online.

The court has discretion to make awards of costs to the prevailing party, and in principle court fees are recoverable in the event of a successful claim. However, the legal fees recoverable by the successful party are only nominal. In fixing the amount of lawyers' fees, the court must have due regard to the complexity of the case and the time spent and amount of work done by the lawyer in handling the matter.

The maximum amount that can be recovered for legal fees is generally not more than THB500,000. It is often much less.

The defendant can apply to the court for an order requiring the claimant to deposit money or security with the court for costs and expenses if either:

- the claimant is not domiciled or does not have a business office situated in Thailand and does not have assets in Thailand; or
- there is a strong reason to believe the claimant will evade payment of costs and expenses, if it is unsuccessful.

**Class actions**

As of December 8, 2015, all courts, except the Municipal Courts (i.e. local district courts that handle small claims and minor criminal cases that may be dealt with by fines and penalties), have jurisdiction to hear and determine class action lawsuits.

In order to be certified as a class action, the court must be convinced that the class members carry common rights, facts and base their legal claims on common ground (despite their varying injuries). The court then considers whether the class action should be heard. During this phase, if class members decide that the class action remedy does not best suit their needs, they have a period of 45 days to withdraw from the class.

The court proceeds to appoint a class action officer, who assists the court by attempting mediation, collecting and verifying evidence, meeting with witnesses and taking statements before and during the trial. From a procedural standpoint, the trial portion of class actions is similar to ordinary civil actions with the same processes of mediation, submission of evidence, hearing of witnesses and the delivery of a judgment.

Upon the rendering of a judgment, the claimant (on behalf of the group) may file an appeal. There are no individual appeal rights. Such appeal can be made to the Court of Appeal and then to the Supreme Court. Unlike appeals to the Court of Appeal, there is no automatic right of appeal to the Supreme Court. In order to appeal a decision to the Supreme Court, the applicant must first obtain permission from the Supreme Court to file its appeal.

**Key contacts**

**Kevin Chan**  
Partner, Head of Litigation and Regulatory, Asia  
DLA Piper Hong Kong  
kevin.chan@dlapiper.com  
T: +852 2103 0823
Overview of court system

The UK has three distinct legal jurisdictions:

- England and Wales;
- Scotland; and
- Northern Ireland.

Each jurisdiction has its own legal system, distinct history and origins. There is no concept of UK law.

England and Wales civil system is a common law jurisdiction, where case law (in the form of published judicial decisions) is of primary importance. Although on its face complex, and in some respects arcane, the court system in England and Wales provides an effective, relatively efficient and reliable process for dispute resolution which makes it one of (if not the) most popular jurisdictions in the world.

Most commercial cases start in the High Court. This is made up of three divisions: Queen's Bench; Chancery; and Family. The Queen's Bench division contains a number of specialist courts, namely the Admiralty, Commercial, Circuit Commercial (formerly Mercantile), Technology and Construction, Administrative and Planning Courts and the Queen’s Bench Civil Lists. The Chancery Division deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. The Chancery division also includes three specialist courts: the Insolvency and Companies Court; the Patents Court; and the Intellectual Property Enterprise Court (IPEC). The Financial List is a specialist list set up to handle claims related to the Financial Markets and operates as a joint initiative involving the Chancery Division and the Commercial Court, handling claims of £50 million or more which require particular expertise in the financial markets. The Business and Property Courts have also been set up as an umbrella bringing together the work of the Chancery Division and specialist courts of the Queen's Bench Divisions of the High Court. Judges allocated to a particular division or specialist court typically have specialist expertise in the legal disciplines which those courts deal with.

A number of separate tribunals operate alongside the courts and share their appeal system, such as the Employment Tribunal, which hears employment cases.

Appeals from the High Court are to the Court of Appeal then UK Supreme Court, which is the ultimate court of appeal in England and Wales (or, exceptionally, directly from the High Court to the Supreme Court).

Case management in civil cases in England and Wales is subject to procedural rules. For the most part, these rules are contained in the Civil Procedure Rules (known as the CPR) and accompanying Practice Directions. A number of the more specialized courts, such as the Commercial Court, also have their own rules and guidelines.

Limitation

The Limitation Act 1980 provides that claims based on torts (i.e. civil wrongs) or breach of contract must be issued within six years of the cause of action arising – this being either the date on which the negligent act or omission occurred, or the date on which the breach of contract occurred respectively. However, a different limitation period may apply where, for example, the claim is based on the breach of a
Procedural steps and timing

Proceedings are initiated by a claim form which must be filed at the relevant court and served on all parties to the case. This is either accompanied or followed by particulars of claim, which explain the claim in more detail. Both the claim form and the particulars of claim must be sent to the defendant within four months of issue.

There is no mandatory requirement that a party has legal representation, and parties are at liberty to represent themselves as litigants in person. However, the UK Supreme Court recently held that “the [court] rules do not in any relevant respect distinguish between represented and unrepresented parties” and, as such, litigants in person will not be given special treatment with regards to compliance with the relevant court rules or orders. Therefore, save in very low value claims, both parties will usually have legal representation.

The first step for a defendant is to acknowledge service of the claim. Under Part 7 of the CPR, the time limit to acknowledge service is 14 days from the service of the particulars of claim (at which point it can, if it wishes, indicate its wishes to challenge the jurisdiction of the court).

If the defendant does not challenge the jurisdiction of the court or the relevant application is dismissed, the parties then proceed to exchange pleadings, which define the parameters of the dispute between the parties and the specific issues which are to be proved by each party. These can include:

- the defence, which must be served within 14 days of the claim being issued or, if an acknowledgment of service is filed, within 28 days of the acknowledgment of service;
- counterclaims, which usually accompany the defence, and
- replies, which are optional and for which there is no definite time limit.

If an allegation has been made which is unclear, parties can also request further information.

In most cases, disclosure takes place after an order has been made at the case management conference (see further below). Parties then go on to prepare evidence for a final hearing of the dispute. This will almost always include witness statements and may include expert evidence.

Throughout the case, the court will exercise its wide case-management powers to ensure the efficient management of the proceedings. This is likely to include a case-management conference, a pre-trial review, directions orders (regarding the conduct and timetable for the case up until its final hearing) and consideration of disclosure and costs issues.

Timeframes for each stage of proceedings (and the case as a whole) vary from case to case. Most cases take a minimum of 18 months to 2 years from start to finish, assuming no appeal. Some will take longer, although fast-track procedures are sometimes available.

A defendant can also apply for summary judgment and/or strike out of a claim, which allows the court to decide some or all of a case without a full hearing. The defendant will have to prove that the claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case (or a particular element of it) should be disposed of at full trial.

In order to succeed, a claimant must establish that, on the balance of probabilities (i.e. that it is more likely than not) that its position is correct and that it can satisfy all of the elements of the causes of action on which its claim is based.

Disclosure and discovery

Subject to some very narrow exceptions, each party to civil litigation in England and Wales will have to give disclosure to the other parties. The rationale behind this is that, in order for justice to be done between opposing parties, all relevant material must be out in the open. Privileged documents must be disclosed (i.e. stated to exist or have existed) but other parties do not have a right to inspect them.

From January 1, 2019, new disclosure rules are being applied to existing and new proceedings in the Business and Property Courts in London, Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle for a period of two years (although certain proceedings such as competition claims and claims within the Intellectual Property and Enterprise Court fall outside the scope of the new rules).

The new rules envisage a more bespoke approach to disclosure, tailored to fit the specific needs of the individual case, with much of the work involved in data mapping being carried out in the run-up to the case management conference, and set out in a document called the
Disclosure Review Document. There are express obligations (referred to as the Disclosure Duties) upon the parties and their legal representatives in relation to the preservation of documents and compliance with any order for disclosure as well as specific provisions of the rules.

Generally, when parties serve their statements of case they will be required to provide Initial Disclosure to the other parties by providing them with copies of key documents. Depending upon the nature of the dispute, the parties may regard this as sufficient. In more complex matters, there is the option for the parties to request Extended Disclosure by choosing a model for disclosure from a range of graduated options, including:

- Model A: Disclosure confined to known adverse documents (no search required);
- Model B: Limited disclosure (no search required);
- Model C: Request-led, search-based disclosure;
- Model D: Narrow, search-based disclosure, with or without Narrative Documents; and
- Model E: Wide search-based disclosure.

Any order for Extended Disclosure (if any) will be made at the case-management conference and a party must comply within the time ordered by serving various forms and lists and producing the documents over which no claim is made to withhold production.

The provisions of Part 31 of the CPR continue to apply to cases that fall outside the scope of the new disclosure rules. The concept of standard disclosure requires the parties to disclose the existence of all documents which are, or have been, in their control and on which they rely in support of their case as well as those which adversely affect their own case, adversely affect another party's case or support another party's case (together with any documents required to be disclosed by a relevant practice direction). In many commercial cases, the court is able to select an appropriate type of disclosure from a broader menu of options (which include disclosure on an issue by issue basis). In practice, the parties will often seek to agree between themselves a workable approach to disclosure, including their plans for handling disclosure of electronic documents, and then seek the court's approval.

Under both sets of rules, the disclosure order is usually made at the case management conference, after the close of pleadings, when the points of dispute between the parties have crystallized. In certain circumstances, pre-action disclosure, or disclosure at a different stage, may also be ordered.

**Default judgment**

Default judgment can be applied for in circumstances where a defendant has failed to file:

- an acknowledgement of service within 14 days of service of the claimant's particulars of claim; or
- a defence within 14 days of the claim being issued or, if an acknowledgement of service is filed, within 28 days of the acknowledgment of service.

The effect of a default judgment is the early determination of the claim. A defendant may seek to resist an application for default judgment by challenging the basis of the application. However, as a default judgment application amounts to a recognition of procedural failings and that the relevant time period has expired, these are difficult to challenge.

**Appeals**

Judgments of civil courts can be appealed. However, appeals are usually limited to questions of law and not issues of fact. A party wishing to appeal will need the permission of either the court which has given judgment, or the appropriate appellate court before its appeal can proceed. Permission for an appeal will only be given where the court considers that the appeal has a real prospect of success, or there is some other compelling reason for the appeal to be heard. Decisions of the High Court may be appealed to the Court of Appeal. Decisions of the Court of Appeal may be appealed to the UK Supreme Court where they concern an arguable point of law of general public importance.

There are prescribed time limits for filing a notice of appeal and these vary depending upon the type of appeal that is being brought. In the majority of cases, the time limit is 21 days to appeal against a county court or High Court decision. However, there are a number of exceptions, for example, 28 days if it is an appeal against an Upper Tribunal decision or 14 days if it is an appeal against a Competition Appeal Tribunal decision.
The timeframe for an appeal to be resolved depends on the complexity of the case, and the court's workload. In the Court of Appeal: (i) a relatively urgent appeal may take around six months; (ii) an appeal on a non-urgent complex commercial matter may take between 12 to 18 months, from the moment when permission to appeal was granted. Appeals to the Supreme Court similarly may take around 12 to 18 months.

**Interim relief proceedings**

A range of interim remedies is available to parties to legal proceedings. Interim remedies are provisional measures generally granted with a view to preserving the status quo, or preventing the dissipation of assets. Common applications for interim remedies include: interim declarations; interim injunctions (injunctions are orders prohibiting a person from doing something or requiring a person to do something); orders for the detention, custody, preservation, inspection, sampling of relevant property; sale of relevant property which is of perishable nature or which for any other good reason it is desirable to sell quickly; freezing injunctions; search orders; orders to provide information about assets; injunctions restraining foreign legal proceedings; applications for security for costs; applications for orders for interim payment on account of any damages, debt or other sum the court may hold the defendant liable to pay; applications for further information; extensions of time; and specific disclosure.

An order for an interim remedy may be made at any time, including (i) before proceedings are started; and (ii) after judgment has been given. However, the court may only grant an interim remedy before proceedings are started if the matter is urgent or it is otherwise desirable to do so in the interests of justice. If the court grants an interim remedy before a claim has been started, the court should give directions requiring a claim to be commenced.

As a general rule, no order should be made in civil proceedings without notice to the other side unless there are good reasons for departing from the general rule that notice must be given. An application for interim relief must be supported by evidence, unless the court orders otherwise. In (i.e. without notice) applications, relief can generally be obtained within a matter of days. However, it is possible to obtain an interim order (including an interim injunction) at a few hours' notice if the urgency of the matter justifies it. If the court grants the application, the defendant is provided with an opportunity to object to the granting of relief at a subsequent hearing (referred to as the return date). At this hearing, the defendant would seek to persuade the court that any order made should not be continued.

The criteria for obtaining relief varies depending on the type of relief sought but the overarching principles the court will consider when it comes to interim injunctions, for example, include:

- whether there is a serious issue to be tried. The evidence must show that the applicant has a real prospect of succeeding in its claim and, if so:
  - whether, if the applicant were to be successful at trial, damages would be an adequate remedy;
  - whether, if the respondent were to be successful at trial, damages under a cross-undertaking to pay damages by the applicant in return for an interim injunction would be an adequate remedy; and
- if there is a question as to the adequacy of damages to either or both parties, whether it would be just and reasonable to grant the relief sought.

The parties can appeal the court’s decision on the application for interim relief to a higher court. The appellant will usually need to seek permission within 21 days of the date of the initial decision. Where the lower court refuses the application for permission to appeal, a further application may be made to the appeal court. Such application must be filed within seven days after service of the notice from the lower court that permission to appeal has been refused. Either way, permission will only be granted where the appeal has a real prospect of success, or where there is some other compelling reason why the appeal should be heard.

Again, legal representation is not mandatory, although as applications for interim relief can be relatively complex, it is ordinarily the case that both parties are legally represented.

**Prejudgment attachments and freezing orders**

Freezing orders are a type of interim relief. Like other types of interim relief, a freezing order can only be granted before proceedings are commenced if the matter is urgent or it is otherwise necessary to do so in the interest of justice. Where no claim form has been issued, the applicant will be required to undertake to the court that it will issue a claim form immediately or as directed by the court.
Freezing orders can be obtained from the courts in respect of assets within England and Wales or beyond where the respondent has insufficient assets within the jurisdiction to cover the amount of the claim.

Freezing orders are typically applied for without notice and, if granted, will usually be made for a period of time following which a return date will be fixed for a full, with notice hearing. The return date, usually between 7 to 14 days from the grant of the freezing injunction, provides the respondent with an opportunity to challenge the order. A worldwide freezing order will cover assets anywhere in the world, though local enforcement proceedings will be required to give it effect.

All types of assets may be frozen, including bank accounts, shares, motor vehicles and land. The assets should not be perishable but may be intangible, for example goodwill or after-the-event insurance premium.

An application must be made to the court where the claim was started. The court has discretion as to whether to grant a freezing order and will do so only if:

- the applicant has a cause of action against the respondent;
- the applicant has a good arguable case;
- the respondent has assets that exist within the jurisdiction;
- there is a real risk of dissipation of those assets without the freezing order; and
- it is just and convenient for the court to exercise its discretion in favor of the grant of the freezing order.

The applicant will usually also have to provide an undertaking in relation to damages to the court, agreeing to compensate the respondent if it later turns out that the applicant was not entitled to the freezing order and the respondent has suffered loss in the meantime.

**Costs**

Court fees for commencing a claim vary, but are broadly proportionate to the size of the claim. For example, the court fee for a claim of up to GBP300 is GBP35 or GBP25 if filed online. For a claim of between GBP10,000.01 and GBP100,000, the court fee is 5.0% of the total claim amount and for a claim for in excess of GBP200,000 it is a flat fee of GBP10,000. The costs incurred by each party will vary from case to case, depending on factors such as the value and complexity of the case, the duration of the case and the costs associated with their legal representatives.

As a general rule, the successful party in a litigation will recover its costs from the unsuccessful party. However, the court has a wide discretion to order otherwise. Where each litigant has enjoyed some success in the proceedings, courts may make costs orders that reflect the litigants' relative success. Courts can also depart from the general rule by requiring a successful party to bear their own costs where there is good cause to do so (e.g. when a successful claimant is awarded only nominal damages).

Where a party who has made an offer to settle under the CPR’s Part 36 (Offers to settle) regime achieves a result which is better than the offer it made, it may recover more in costs than would otherwise have been the case. Conversely, if a party's costs have exceeded any budget which it has been required to submit to the court, it may be penalized for doing so. Successful parties will almost never recover all of their legal costs, which are assessed to establish whether they are proportionate and reasonably incurred.

**Class actions**

There is no direct equivalent in the UK to the US-style class action. 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 can also be managed together with the court’s permission under a group litigation order (known as GLOs). In some cases, one or more claimants can also represent other claimants with the same interest in the proceeding.

**Key contacts**
UK - Scotland

Overview of court system

The UK, judicially, consists of three jurisdictions:

- England and Wales;
- Scotland; and
- Northern Ireland.

There are important differences between all three jurisdictions. This report exclusively refers to the legal system in Scotland; Scots law.

Scots law is influenced by both civil law and common law, as it has characteristics of both approaches. Scots law recognizes four sources of law: legislation, legal precedent, specific academic writings and custom.

The civil court system in Scotland is split between the Court of Session, Scotland's supreme civil court which sits only in Edinburgh and where the most complex and valuable disputes are heard, and the Sheriff Courts, located in districts throughout Scotland and where lower level claims are determined.

The Court of Session is split into the Outer House (first instance) and Inner House (appeal) courts. A single judge, known as a Lord Ordinary, usually hears cases in the Outer House and a bench of three judges usually hears Inner House appeals. The Sheriff Courts are Scotland's local courts and are presided over by a single judge called the Sheriff.

Disputes with a total value of over GBP100,000 may be started in either the Court of Session or the Sheriff Court. Disputes with a total value of up to GBP100,000 may only be commenced in the Sheriff Court.

Limitation

The prescriptive (limitation) period for contractual and tortious claims in Scotland is five years. For personal injury claims it is three years. In both cases the claim must be raised and served on the other party within this period. After the time period has expired, the claim is said to have prescribed and the right to enforce is lost.

Procedural steps and timing

The main procedural steps in ordinary procedure are similar in the Court of Session and the Sheriff Court. In the Court of Session, the pursuer (claimant) commences the claim by preparing a summons. In the Sheriff Court, the initiating document is the initial writ. An individual may act as a litigant in person in either court. However, companies and other business vehicles must obtain permission from the court to be represented by a lay representative (such as a director).

The summons or initial writ is lodged with the court in order to obtain a warrant to serve. A warrant to serve is the court's authority to commence proceedings. Once the authority is obtained the initiating document is served by the pursuer on the defender (respondent). The defender has 21 days (42 days if outside the EU) to consider the claim. If the defender intends to defend the claim it must then lodge
defences within either 7 or 14 days.

An adjustment period of approximately eight weeks usually follows where the pursuer and defender refine their respective pleadings. The case then calls in court for a procedural hearing. At that hearing, the judge reviews the pleadings and decides how the dispute is to be resolved.

Usually this is by either:

- the fixing of a proof, a trial on the facts of the case; or
- the fixing of a debate, a hearing on a point of law which may require to be determined before evidence can be led.

Timeframes for actions vary greatly depending on the complexity of the case. Undefended actions are generally determined within a month, whereas complex defended cases can take 18 months or more.

A fast-track, judge-managed procedure is available for commercial disputes in the Court of Session and in some Sheriff Courts.

In the vast majority of cases, judgments are in writing and are generally delivered within around three months of any substantive hearing.

**Disclosure and discovery**

There is no obligatory disclosure of documents in court proceedings in Scotland. Litigants need only disclose documents that they seek to rely on to prove their case. The court also has the discretion to order a party to submit certain additional evidence.

Parties seeking further documents held by the other side or by any third party must apply to the court for a disclosure order specifying the document or category of documents that they require. The order will only be granted if the documents specified are relevant to the case. Requests for disclosure that amount to fishing for evidence are not permitted in Scotland.

A party contemplating litigation in Scotland may want to see, or at least preserve, relevant information that will be of assistance in pursuing a claim before commencing proceedings. A statutory procedure exists to apply for disclosure of documentation before proceedings are commenced. In order to obtain such material, an applicant must satisfy the court that it has a *prima facie* case proceedings are likely to be commenced, and the documents that are pursued will assist in further specifying or detailing the pleadings.

It is possible to obtain an order for recovery of documents and / or property without the knowledge of the party holding the material – often by way of undertaking a dawn raid – where there is a risk that prior warning would cause documents or property to destroyed or amended, raising concerns as to whether recovery could be made.

**Default judgment**

Decree by default is available in Scotland where either party fails to comply with a procedural requirement such as failing to attend at a hearing. Decree in absence is available where the defender fails to indicate an intention to defend the claim in a timely manner. A decree by default may be appealed. However, an appeal will only be granted where it is “in the interests of justice” to do so. A defender can seek to have a decree in absence recalled (withdrawn) within seven days of the decree being granted in the Court of Session or prior to the decree being implemented in the Sheriff Court.

**Appeals**

Judgments of civil courts in Scotland can be appealed to a superior court. Appeals from the Sheriff Court are to the Sheriff Appeal Court. Appeals from the Outer House are to the Inner House and from the Inner House there is the right to request that the Inner House allow the appellant to make a further appeal to the UK Supreme Court in London. In the event such a request is refused, a party can ask the Supreme Court directly for permission to appeal. Such permission will normally only be given if the appeal raises a point of general public importance.

The time period in which an appeal can be made in the Sheriff Court is 28 days, although in cases where leave is required, permission to appeal must be obtained within seven days. Appeals from the Sheriff Appeal Court to the Inner House of the Court of Session can only be made with the permission of either court. Appeals from the Outer House to the Inner House in respect of a final decision must be made
within 21 days and appeals from the Inner House to the UK Supreme Court require an application for leave to be made within 28 days of the decision being appealed against being made. Generally, the UK Supreme Court will hear an appeal within 12-15 months of permission being granted, and the judgment follows usually within 12 weeks of the hearing.

Interim relief proceedings

In Scotland, interim relief proceedings are subject to statutory and court rules. The relevant court procedure depends on the type of relief sought and the court in which the application is made. Both the Court of Session and the sheriff court may grant interim relief.

In Scotland, there are four broad categories of interim relief available:

- measures to preserve evidence (for further details on preservation of documents, see Disclosure and discovery);
- measures to secure assets in relation to money claims (for further details see Prejudgment attachments and freezing orders);
- preservation of assets in the event of insolvency; and
- measures to protect a party's right against a wrongdoing (also referred to as interim interdict).

Preservation of assets in the event of insolvency

An ex parte (i.e. without notice) application may be made as part of insolvency proceedings for an interim order to appoint an insolvency practitioner to preserve assets pending a formal appointment being concluded. This measure is only available where there is a risk that those in control of the company or organization concerned may dissipate assets if they are given advance notice of the insolvency proceedings. The procedural requirements vary depending on the insolvency process being pursued and the court in which the application is being made.

Interim interdict

An interim interdict is a court order requiring a person not to do something pending the resolution of a claim for interdict. It is the equivalent of an interim injunction in England.

The party seeking an interim interdict must demonstrate to the court that there is a prima facie case and that "the balance of convenience" favors the granting of the order. The order can be sought and obtained on an urgent basis by making an application to the court. If an order is sought urgently, these can usually be heard by the court within 24 hours. It can also be granted without notice.

However, if the defender to an interim interdict application has lodged a caveat at court (effectively an early warning device) the court will require that the defender be made aware of the application and be given a right to be heard by the court before the order is granted.

If the order is granted ex parte, then the defender may apply at any time to have the order recalled (withdrawn). If the order is granted with both parties in attendance at the hearing, the defender must show a material change in circumstances to have the order recalled. If the defender wishes to appeal, on the facts or the law, then the timeframe is within 14 days of the decision.

It is not necessary for a party to be represented by a solicitor at interim relief proceedings, but given the legal arguments necessary, legal representation is normal. Individuals can represent themselves and companies and other business vehicles can apply for permission to be represented by a lay representative (such as a director).

Prejudgment attachments and freezing orders

Interim attachment is a type of interim relief measure. It is a remedy available in Scotland to freeze a party's corporeal moveable assets (with certain exceptions) pending the outcome of legal proceedings. To obtain the remedy the applicant is required to demonstrate, on the balance of probabilities:

- a prima facie case on the merits;
- that there is a real and substantial risk that any judgment in favor of the applicant would be defeated or prejudiced by the debtor's insolvency, or the debtor disposing of the assets in some manner; and
- that the order is reasonable in the circumstances.
The remedy can be applied for at any time during the progress of a court action or shortly before one commences. The order can be obtained without notifying the other party in advance (ex parte), but in such circumstances a subsequent hearing is fixed to enable the other party to be heard. If an interim attachment order is executed wrongfully the creditor can be held liable in damages to the debtor.

Please note that only corporeal moveable property may be subject to an interim attachment order. Banks accounts and funds in the hands of a third party may be subject to an arrestment on the dependence of an action. Arrestment prevents the debtor from disposing of funds or goods held by a third party. Inhibition prohibits the debtor from disposing of, or otherwise transacting with, heritable property (real estate), pending the outcome of a court action. The criteria for obtaining an arrestment or inhibition on the dependence of the action are the same as those for interim attachment.

These remedies are available in both the Court of Session and the Sheriff Court. The application must be made in the same court in which the action has been (or is being) commenced. The application is made as part of a claim on the merits, either when warrant (or authorization) to serve the claim is applied for or during the progress of the action through the court. Where the application is made and granted before the claim is served then service of the claim will follow immediately and a hearing will be fixed for the respondent to address the court.

Where an interim attachment order is executed wrongfully, the creditor can be held liable in damages to the debtor.

**Costs**

Costs are called expenses in Scotland. Expenses are awarded at the court's discretion, although the general rule is that they follow success. The unsuccessful party will ordinarily have to pay the successful party's costs.

Expenses recoverable in the Scottish system are determined by reference to a statutory Table of Fees. This allows a block fee to be claimed for each element of the legal work undertaken in the case or the charging of a lawyer's time by reference to a fixed rate.

Generally the Table of Fees allows the successful party to recover up to 60-65% of their actual costs, although in commercial cases it is often less than that. To compensate for this deficit, enhanced costs can be awarded in complex cases via an additional fee procedure.

The level of court fees depends upon the court in which the action is raised. The Court of Session, as the superior court, incurs higher fees than the Sheriff Court. Fees are generally payable by each party to the action. The fees are set out in Scottish Statutory Instruments (referred to as a Fee Orders). These are regularly updated by Fee Amendment Orders.

**Class actions**

At present there is no formal class action procedure in Scotland, although the Scottish Parliament has recently passed the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, which provides for the creation of such a procedure. Implementation of the Act is expected over the coming year or two. Historically, cases raising similar issues in Scotland have been sisted (frozen) pending the resolution of a test case.

**Key contacts**

**Neil Bowker**
Partner
DLA Piper UK LLP
neil.bowker@dlapiper.com
T: +44 20 7153 7162
United Arab Emirates

Last modified 19 July 2019

Overview of court system

The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are financial free zones in the United Arab Emirates (UAE) established pursuant to Federal Laws of the UAE, specifically pursuant to the UAE Constitution and UAE Federal Law No. 8 of 2004 (Financial Free Zone Law).

The Financial Free Zone Law allows for the creation of independent jurisdictions within the UAE in that financial free zones established under the law are exempted from all civil and commercial laws of the UAE. However, they remain subject to the criminal laws of the Emirate in which they are established and the federal criminal laws of the UAE.

In this regard, the DIFC and ADGM (in relation to civil and commercial matters) each have their own legal and regulatory frameworks. The ADGM's legal framework is based on English law. The ADGM regulations adopt selected pieces of English legislation, including matters relating to contract, tort and trusts. By contrast, the DIFC has its own body of laws. DIFC law takes precedence, followed by the law of any jurisdiction other than that of the DIFC expressly chosen by the parties followed by a cascade which ultimately ends with English law. That said, in contractual disputes, the DIFC and ADGM courts should apply the chosen law of the parties.

The DIFC and ADGM each also have their own two-tier court system: the Court of First Instance and the Court of Appeal. Furthermore, the DIFC and ADGM courts have their own rules of court procedure. These procedural rules are broadly based on the English Civil Procedure Rules.

The judges of the DIFC courts are a mix of UAE civil trained judges and judges from various common law jurisdictions including England, Australia and Singapore. The judges of the ADGM courts are from common law jurisdictions only.

The DIFC and ADGM, as jurisdictions, are colloquially referred to as being offshore as opposed to the onshore jurisdictions of each of the seven Emirates of the UAE.

It is worth highlighting that the DIFC and ADGM are young jurisdictions that are continuing to develop on a daily basis. Both these jurisdictions were created and operate to provide an alternative forum for dispute resolution in the UAE. In doing so, both the DIFC and ADGM courts have needed to put in place a framework for the interaction of their jurisdiction with the onshore jurisdictions in the Emirates of their establishment and the wider UAE. To this effect, the DIFC and ADGM courts have entered into memoranda of understanding with various courts and jurisdictions, both in the UAE and abroad, which seek to establish processes for the mutual enforcement of judgments and orders.

In this regard, the current legal framework between the DIFC courts and the onshore Dubai courts allows a party to directly enforce a final judgment or order of the DIFC courts onshore in Dubai through the Dubai courts. This has led parties to seek to enforce arbitral awards (both local and foreign) and foreign judgments (including those which have no connection with the DIFC) in the Dubai courts by having them recognized and enforced by the DIFC courts first. This has led to arguments as to whether the DIFC can be used as a conduit jurisdiction for the enforcement of judgments onshore in Dubai in this way.

In addition, a Judicial Committee has recently been formed in Dubai, seemingly as a result of this approach to enforcement. The committee is tasked with resolving conflicts of jurisdiction and judgments between the DIFC and Dubai courts. The committee is formed of three DIFC court judges, three onshore Dubai court judges and is chaired by the head of the Dubai Court of Cassation. The chair has the
casting vote in cases of deadlock.

Given that the ADGM and its courts have only recently been established, it remains unclear whether similar issues may arise in relation to
the interaction between the ADGM courts and the onshore Abu Dhabi courts. This is because mechanisms similar to those implemented
between the DIFC courts and the onshore Dubai courts are being put in place between the ADGM courts and their sister courts in
onshore Abu Dhabi.

**Limitation**

The application of limitation periods is usually an issue of substantive law and therefore the law applicable to the particular contract or
interaction of the parties. Advice should be sought on a case-by-case basis on the applicable limitation period and its expiry, as it can
critically affect a party’s ability to bring a claim.

Assuming that DIFC or ADGM law is the applicable law in respect of limitation periods, the general position is set out below.

Under DIFC law, the position is generally as follows:

- an action for breach of contract must be commenced within six years after the cause of action accrued;
- in respect of claims in negligence, occupiers’ liability or misrepresentation, a cause of action arises on the earliest date on which the
  claimant knows or ought reasonably to know about the loss that gives rise to the cause of action, and an action must be commenced
  within 15 years of the date that the cause of action in fact arose; and
- where a cause of action arises as a result of fraud by the defendant, there is no time limit before which the action must be
  commenced.

The ADGM Regulations adopt selected pieces of English legislation, including the English legislation relating to limitation and in particular
adopts the Limitation Act 1980 and the Foreign Limitation Periods Act 1984. The position is, generally, as follows:

- an action for breach of contract must be brought within six years of the date of the breach of contract;
- an action for breach of deed must be brought within 12 years of the breach of the obligation in the deed;
- an action in tort / negligence generally, must be brought within six years from the date the damage is suffered;
- an action in negligence, and in respect of latent damage, has to be brought within the later of six years from the date the damage
  occurred or three years from the date on which the claimant had the requisite knowledge and the right to bring such an action; and
- an action in fraud has be to be brought within six years from when the claimant discovered the fraud, or when they could, with
  reasonable diligence, have discovered it.

**Procedural steps and timing**

The DIFC and ADGM court rules have generally similar litigation procedures. Subject to the issues in dispute, proceedings will generally go
through the following stages:

- **Claim**: A party files its claim with the court and serves the same on the parties to the proceedings.
- **Pleadings**: Parties exchange their pleadings which include particularized statements of claim, defense, counterclaims and defense to
counterclaims. These pleadings will identify and particularize the issues in dispute.
- **Disclosure**: This will begin during the pleadings phase and proceed concurrently with the remaining phases.
- **Factual witnesses**: Parties will exchange any statements of witnesses of fact they wish to rely on and potentially also exchange reply
  statements.
- **Expert witnesses**: Parties will exchange any statements of experts they wish to rely on and potentially also exchange reply
  statements.
- **Trial**: Parties will finally attend an oral hearing before the court to argue their respective cases. It is also at trial that the witnesses and
  experts of the parties will be examined and cross-examined on their evidence.
It is difficult to estimate the timeframe of proceedings in the DIFC courts, and the ADGM courts (as at the time of writing) is yet to hear cases that have been through the entirety of the litigation process (including appeals). That said, the relevant factors to be considered include:

- the complexity and number of issues in dispute;
- the availability of the parties, their respective counsel, witnesses and experts; and
- the availability of the judge(s) allocated to the case.

Legal representation in DIFC or ADGM court proceedings is not mandatory. However, in circumstances where a claim falls into a small claims category, legal representation may not be permitted by the relevant court rules.

Each of the DIFC and ADGM court rules have specific rules for when a claim is considered to fall within the jurisdiction of the small claims court or tribunal. These rules:

- are aimed at efficiently dispensing with cases and examples of this include:
  - truncated timetables for service of proceedings and pleadings;
  - no provision for a document production / disclosure process. However, orders for document production could be applied for;
  - expert evidence is not permitted without an order of the court; and
  - the ability of the parties to agree that the dispute be dealt with on the papers; and
- are not solely related to value; small claims could include, for example, employment cases where the parties have agreed to refer the matter to a small claims tribunal).

It is also worth noting that each of DIFC and ADGM rules have unique provisions and processes in respect of small claims. For example, the DIFC rules provide for:

- a conciliatory process identified as a consultation phase where the parties meet before the judge hearing their case with the aim of settling the dispute prior to a hearing on the merits; and
- hearings and consultations to be in private (unless the parties agree otherwise).

**Disclosure and discovery**

In the DIFC courts each party is required to submit to the other parties:

- all documents available to it on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's); and
- the documents which it is required to produce by any DIFC court rule.

The default position under the ADGM court rules is similar in that parties must give to all other parties standard disclosure, which includes all the documents on which a party will rely upon at trial, except for documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's). This default position can vary depending on the type of proceedings, the agreement of the parties or direction from the court.

After the initial stages, the parties are then given the opportunity to provide Requests to Produce Documents to their opponent (in the DIFC) or to make an application for specific disclosure to the court (in the ADGM), in which they are required to precisely identify the documents requested and explain (among other things) why they are relevant and material to the outcome of the case (DIFC), or would assist the fair and efficient trial of the proceedings (ADGM).

In circumstances where production of documents is disputed, in both the DIFC and ADGM, applications can be made to the court to rule on whether such production should take place. The court will usually be guided by whether the document in question is relevant to the issues in dispute (and meets other requirements, such as existence and proportionality of the request). The court will then issue orders for production.

The DIFC court rules allow a DIFC court to, at any time, request a party to produce to the court and to the other parties any documents that the court considers to be relevant and material to the outcome of the case on the court's own initiative. A similar rule does not
appear in the ADGM court rules. That said, an ADGM court could make such an order based on its general management powers which allows an ADGM court to make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of the ADGM court rules.

In addition, both the DIFC and ADGM court rules allow for disclosure to be ordered against non-parties to proceedings where the court is convinced that:

- the disclosure produced as a result of the order is likely to support the applicant's case, or adversely affect the case of one of the other parties to the proceedings; and
- the disclosure is necessary in order to dispose fairly of the claim.

**Default judgment**

The DIFC and ADGM court rules allow a claimant to apply to obtain a default judgment where the defendant has missed the time limit to acknowledge the claim against it, or has acknowledged the claim but failed to file a defense.

Once default judgment has been granted, the defendant has no right to appeal the court's decision. However, the defendant may apply to the court to have the judgment set aside or varied. There is no specific guidance provided by the ADGM or DIFC court rules in respect of when an application to set aside or vary a default judgment should be made. However, it is likely that the DIFC and ADGM courts would apply the principles established by the courts of England and Wales. Therefore, any such application should be made promptly. The courts of England and Wales have held promptness (in the context of the applicable provisions of the English CPR) to mean acting with "all reasonable speed in the circumstances."

**Appeals**

The DIFC and ADGM each have a two-tier court system: the Court of First Instance and the Court of Appeal. The respective court rules of the DIFC and ADGM have broadly similar procedures for the appeal of judgments of the lower court. In each case, before the judgments of the Court of First Instance can be appealed to the Court of Appeal, permission to appeal is required.

Obtaining permission to appeal differs slightly between the DIFC and ADGM courts:

- under the DIFC court rules, where permission to appeal is initially refused on the papers, a party may seek to renew the application at an oral hearing; and
- under the ADGM court rules, all applications for permission to appeal are considered without a hearing.

In DIFC court proceedings, an application for permission to appeal may be made to:

- the Court of First Instance at the hearing where the judgment was made; or
- that court or the Court of Appeal in a subsequent appeal notice.

If permission is sought by way of an appeal notice, that appeal notice must be filed either within the period directed by the lower court or, if no such direction was provided, within 21 days after the date of the decision of the lower court that the appellant wishes to appeal. If the lower court refuses permission, a further application for permission can be made to the Court of Appeal within 21 days of the lower court's refusal.

In ADGM court proceedings, and similar to DIFC court proceedings, permission must be obtained from a decision of a judge in the Court of First Instance in order to appeal to the Court of Appeal. In order to obtain such permission, an application may be made to the Court of First Instance within 14 days of the date when the decision to be appealed was made. Should the Court of First Instance refuse an application for permission to appeal, a further application for permission to appeal may be made to the Court of Appeal within 28 days from the date of the refusal. All applications for permission to appeal are considered by a panel of three judges without a hearing. The panel may grant or refuse permission to advance all or any of the grounds of appeal or invite the parties to file written submissions within 14 days in relation to the grant of permission. Permission to appeal may only be granted where the panel considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

**Interim relief proceedings**
Interim relief proceedings are proceedings that relate to a party seeking orders for interim / provisional relief. Such orders are usually granted at an early stage in the proceedings, or before the merits of a dispute are examined. These are distinguished from final remedies which ordinarily form part of the final judgments or orders that dispose of a dispute. There are a wide range of these orders and they usually act to maintain the status quo between the parties. Such orders or remedies can also be stand-alone in their nature; for example, an anti-suit injunction which prevents or restricts a party’s ability to commence or continue legal proceedings in a particular forum.

The ability to grant and apply for interim remedies is enshrined in the court laws and procedural rules of each of the DIFC and ADGM. At the date of writing, there have been no reported interim applications or orders in the ADGM courts. The DIFC courts, on the other hand, have either granted or heard applications for various interim remedies, including:

- freezing orders (including worldwide freezing orders) (for further details, please see Prejudgment attachments and freezing orders);
- disclosure orders;
- anti-suit injunctions; and
- interim payment orders.

Applications for interim relief are made to the DIFC court and/or ADGM Court of First Instance either on an ex parte basis (i.e. where the respondent is not present at the first hearing) or with notice. In circumstances where the application is made on an ex-parte basis, the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Before entertaining any substantive application for interim relief, the party seeking an interim remedy from either the DIFC or ADGM courts will first need to establish that the relevant court has jurisdiction under its relevant jurisdictional laws. When deciding the substantive application, DIFC court case law illustrates that the approach in deciding the substantive elements of the application generally follows the principles for granting equitable relief in English law. The applicable tests differ depending on the relief sought. However, those elements include:

- whether there is a serious question to be tried;
- whether damages would be an adequate remedy; and
- the balance of convenience between the parties.

Orders for interim relief issued by the DIFC and / or the ADGM court are not appealable, although a party may apply to have the relevant order varied or set aside. The procedure and basis for doing so will depend on the basis on which the particular order was issued.

Given that the DIFC and ADGM are fairly young jurisdictions, it is difficult to accurately estimate the timeframe by which orders for interim relief could be obtained once applied for.

Legal representation for such applications is not mandatory. However, it is strongly recommended that legal advice is sought in respect of any application for interim relief due to the complexity of the legal issues relating to such applications.

## Prejudgment attachments and freezing orders

Freezing orders are a category of interim relief that both the DIFC and ADGM courts have the power to grant. It is also worth noting that, in the case of the DIFC courts, there are cases in which freezing orders granted in other jurisdictions have been enforced. These applications are made to the relevant Court of First Instance.

Orders can be made for the freezing of any assets (moveable and immovable). However, the enforceability of those orders will depend on whether the jurisdiction in which they will be enforced recognizes such orders (or have the power to grant such relief). For example, the DIFC court could make an order to freeze (or otherwise attach) the shares of a limited liability company in onshore Dubai. Whether that attachment will be effective will be subject to: (i) whether the Dubai courts will recognize the DIFC court’s order; and (ii) whether such a form of relief is one that is available under the laws of Dubai and the UAE (and therefore one that the Dubai courts can grant).

The DIFC court generally follows English law principles when considering applications for freezing orders. The considerations for such applications include:

- that there is a serious question to be tried;
that the balance of convenience is in favor of granting such an order;

that there is a likelihood of injury / damage for which damages would not be an adequate remedy;

the applicant having an underlying cause of action, in that the applicant must have a substantive claim that may give rise to a judgment that will be enforced against the respondent's (potentially frozen) assets;

the applicant having a good arguable case;

the existence of the respondent's assets and such assets being sufficient to meet the applicant's substantive claim; and

a real risk of dissipation of the respondent's assets.

Furthermore, in ex parte applications (i.e. where the respondent is not present at the first hearing), the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Additionally, an applicant obtaining a freezing order from the DIFC courts is generally required to provide a cross-undertaking in damages. This would act to satisfy any damages the respondent incurs where it transpires that the application was wrongfully granted.

The ADGM courts are likely to apply a similar approach.

Both the ADGM and DIFC court rules recognize that applications for interim relief (which include freezing orders), may be made before any substantive proceeds are commenced. In that regard, both court rules provide that the court may give directions requiring a claim to be commenced. Therefore, the issuance of any substantive proceedings will be subject to the discretion of the court.

Costs

The DIFC court rules provide the court with considerable discretion when it comes to making orders as to costs. However, the general rule is that the unsuccessful party will be responsible for settling some part of the successful party's costs, and generally, any court fees that party has incurred. The court must have regard to all the circumstances when making an order as to costs. This includes consideration of the degree of success of the cases of the parties, their conduct during the proceedings and any offers to settle. There is also potential for the DIFC court to make no order as to costs. This is usually where the DIFC court finds that the merits of each party's case are balanced.

The DIFC court will assess the amount of costs due to the successful party on either a standard or indemnity basis. Where costs are assessed on the standard basis, the court will:

only allow costs which are proportionate to the matters in issue to be recovered; and

resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favor of the paying party.

On the other hand, where costs are assessed on an indemnity basis, any doubt as to whether costs had been reasonably incurred or are reasonable and proportionate in amount is interpreted in favor of the successful party.

It is also worth noting that the DIFC court is empowered to issue an interim costs order in favor of a party. These costs orders will usually reflect 50% of the costs incurred by the party, or what the court believes is the minimum it will recover.

The ADGM court rules, although somewhat less extensive than the DIFC court rules on costs and their recovery, broadly follow the framework of the DIFC court rules.

Each of the DIFC and ADGM courts have fee schedules relating to court proceedings and applications that are updated on a regular basis. There are a number of fees applicable to a claim including filing fees, application fees and hearing fees.

For substantive claims, and in general, fees are calculated on claim and counterclaim values and expressed as a lump sum plus a percentage.

At the time of writing (March 2019):

the DIFC court fees for money and / or property claims were:
### Class actions

The DIFC and ADGM courts do not have any laws or procedures for class action proceedings. However, the DIFC and ADGM courts are empowered to make a Group Litigation Order to manage claims which give rise to common or related issues of fact or law. Such an order can also be sought by application.

### Key contacts

**Henry Quinlan**  
Partner, Head of Litigation and Regulatory, Middle East  
DLA Piper Middle East LLP  
henry.quinlan@dlapiper.com  
T: +971 4 438 6350
Overview of court system

The analysis below describes the judicial system and practices in the federal courts of the US as well as most state courts. Variations from the prevailing approach are identified for five notable states (California, Delaware, Illinois, New York and Texas).

The US has a federal system of government, with separate judicial systems operating at the federal and state levels. The federal government and all but one state operate under a common law system. The exception is the state of Louisiana, which is a civil law jurisdiction.

There is at least one federal trial court, called a District Court, in each state. Many states are divided into multiple judicial districts. There are 13 intermediate appellate courts, called Courts of Appeal, most of which are arranged geographically and hear appeals from federal District Courts in their assigned states. There is one federal appellate court with nationwide jurisdiction over certain specialized subject matters, consisting largely of patent and administrative law matters. The US Supreme Court has discretion to hear appeals from the Courts of Appeal and is the final court of appeal for the federal judiciary. It is the final arbiter of issues of federal law and questions of constitutional interpretation.

Each of the 50 states has a similar legal system with trial courts assigned to particular geographic areas (usually at the county level), one or more intermediate appellate courts, and a state supreme court. In most states, the state supreme court has discretion to hear appeals from the intermediate appellate courts. Notably, the state supreme courts (cf. the US Supreme Court) are the final arbiters of the laws of their state absent the existence of a federal issue (for example, alleged unconstitutionality of a state statute). In other words, there are certain limited instances when an issue decided by a state supreme court will be elevated to the US Supreme Court.

Notable state variations

- **Delaware** No intermediate appellate court exists in Delaware, due to its relatively small size. All appeals are heard by the Delaware Supreme Court as a matter of right.

Limitation

The limitation period for civil claims varies by jurisdiction and depends on the nature of the claim being brought. These periods typically range from between one and six years, but can be longer depending on the applicable state law and the claim in issue.

Procedural steps and timing

The litigation process is broadly similar across state and federal courts. Individual litigants may be represented by counsel or can choose to represent themselves. Corporations are generally required to retain an attorney to represent them. In federal court and in most states, proceedings are initiated by a complaint, which must be filed in the relevant court. Some states permit a plaintiff to commence a suit by requesting issuance of a summons without filing a complaint, although even in those jurisdictions a complaint must be filed after the summons is issued. The summons and a copy of the complaint must then be served on the defendant. The period for service varies by jurisdiction but is typically between 30 and 90 days after the complaint was filed. Unless service is waived, proof of service must be filed.
with the court (usually the person who served the document would sign an affidavit). Unless there is a good reason, the court will dismiss the action if the summons is not served on the defendant within the applicable timeframe.

There is generally no requirement in United States courts of pre-suit notice or that parties must attempt to resolve their dispute before an action is filed. Defendants have the right to file a motion to dismiss the complaint on a variety of procedural grounds, including lack of personal jurisdiction over the defendant, lack of subject matter jurisdiction by the court, improper service or venue, or failure to state a valid legal claim. Timeframes for filing such motions vary among jurisdictions but are typically between 21 and 60 days.

If no motion to dismiss is filed or if the court denies the motion, the defendant must file an answer to the complaint (typically within 14 to 30 days depending on the jurisdiction). In the answer, the defendants may assert counterclaims against the plaintiff, assert cross-claims against another defendant, or join additional parties. Once an answer is filed, parties begin the discovery process.

Timeframes for discovery vary greatly depending on the complexity of the case and the case management preferences of the assigned judge, and may range from a few months for simple matters to a year or more for complex ones.

Once discovery is completed, any party may file a motion for summary judgment, asking the court to enter judgment in that party's favor based on the undisputed facts of record or a legal question that is dispositive of the case. If no motion for summary judgment is filed or if the court denies the motion, the case is scheduled for trial. Notably, many courts will strongly encourage or order the parties to participate in some form of alternative dispute resolution (e.g. mediation) at some point prior to trial.

Cases typically proceed from filing to trial in two to three years, though longer timeframes may be granted for complex matters.

**Disclosure and discovery**

Civil discovery tools are similar across federal and state courts in the US. Discovery is broad in scope and designed to allow parties to obtain all information related to any claim or defense in the litigation. The court is not typically involved in the discovery process, but may be asked to resolve a discovery dispute between the parties. It is not necessary that the information be admissible at trial. As a result, the scope of discovery is significantly broader than the scope of evidence that may ultimately be presented at trial. Discovery typically consists of a combination of the following:

- **Initial disclosures**: Parties are usually required to exchange certain fundamental information early in the case without a request from the other side. Such disclosures include a list of key witnesses, relevant documents, damage calculations, and identification of any insurance available to cover any part of a party's liability.

- **Requests for production**: Parties may serve requests for production of another party's documents, records, emails, electronically stored information, and other data related to the case. This is often a costly process in complex litigation.

- **Requests for inspection**: If particular premises in one party's control are relevant to the case, any other party may request to inspect those premises. For example, such requests might be used to obtain access to a manufacturing plant where an allegedly defective product was manufactured.

- **Interrogatories**: Parties may serve written questions, to which the other party is required to provide written responses verified under oath.

- **Physical and mental examinations**: If a party claims a physical or mental injury as the basis for a claim, other parties may request that the individual submits to examination by an independently retained physician or other medical practitioner.

- **Requests for admission**: Parties may serve requests asking another party to admit certain, specified facts contained in the request.

- **Expert reports**: If a party retains an expert witness, that witness must prepare a report summarizing the expert's opinions and conclusions, which must be provided to all other parties.

- **Depositions on written questions**: An individual may be placed under oath outside the presence of a judge for the purpose of responding orally to written questions prepared by one of the parties.

- **Depositions on oral examination**: An individual may be placed under oath outside the presence of a judge for the purpose of responding to questions posed by an adversary's attorney. Most attorneys prefer depositions on oral examination to those on written questions, as the latter do not provide the ability for counsel to ask follow-up questions of a witness. Depositions may be taken of witnesses of fact and, in many jurisdictions, of expert witnesses. Corporate parties can be compelled to produce a designated individual with authority to respond to questions on the corporation's behalf.
Discovery may also be obtained from third parties. However, such discovery is typically limited to production of documents, inspection of premises, and depositions, and to information that cannot be obtained from any of the parties to the litigation.

As noted above, discovery in the US is often very broad. Nevertheless, any party may seek entry of a protective order to limit the scope of discovery to ensure that it remains proportionate to the complexity and significance of the case, or to preclude discovery that would impose an undue burden on the party.

Default judgment

The complainant can apply for default judgment in any proceedings where a defendant does not file a defense within the specified timeframe after the complaint has been served. A defendant subject to a default judgment has the option to open and seek to vacate the judgment; though doing so usually requires the defendant to establish good cause for its earlier failure to appear.

Appeals

In the federal system, the 13 Courts of Appeal hear appeals from the decisions of the federal District Courts, and the Supreme Court hears appeals from the decisions of the Courts of Appeal. Most states follow a similar structure for their appeals courts. Some smaller jurisdictions do not have an intermediate appellate court, with all appeals being taken directly to the state Supreme Court.

In all state and federal trial courts, final judgments can be appealed once as a matter of right. Rules of appellate procedure in each jurisdiction set out the requirements and timing for appeals. Appeals must typically be commenced within 30 days following entry of the underlying judgment. Appeals are typically resolved within six to nine months after this notice is filed.

A further discretionary appeal to the applicable supreme court may be allowed with that court's permission. The US Supreme Court hears appeals from federal Courts of Appeal and state courts on questions of federal law, and has limited original jurisdiction to hear suits between states or foreign ambassadors or similar officials. State supreme courts hear appeals from intermediate appellate courts in their respective states. Appeals to a federal or state supreme court are typically resolved in 6 to 12 months.

Typically, appeals may only be taken from final judgments. However, in the federal system, an immediate right of appeal may be taken from orders granting or denying injunctions, establishing receiverships, or adjudicating rights and liabilities in admiralty proceedings. A party may also be able to petition an intermediate appellate court to hear an appeal of an interlocutory order if the order poses a particularly significant and unsettled legal question, though, in practice, such appeals are only rarely allowed. Appeals are typically resolved in six to nine months.

Notable State Variations

- **California.** There is no right of immediate interlocutory appeal; however, a party may petition an appellate court for a writ of mandamus to permit an appeal on a particularly significant issue. This procedure is often used to challenge an order denying a petition to quash a complaint for lack of personal jurisdiction over the defendant.

- **Illinois.** Certain contempt orders are immediately appealable if they impose a monetary fine or other penalty.

- **New York.** New York is significantly more generous in its allowance of interlocutory appeals than other states or the federal system. With few exceptions, interlocutory appeals may be taken from any order that involves some part of the merits of a case or affects a litigant's substantial rights. *Ex parte* orders are not eligible for interlocutory appeal.

- **Texas.** Orders granting or denying class certification or denying summary judgment based on a finding of immunity are immediately appealable as of right.

Interim relief proceedings

State and federal courts have wide discretion to grant interim relief in the form of injunctive orders. These orders may require a party to do, or refrain from doing, a particular act. Injunctive orders are equitable in nature, and such relief therefore does not typically include an order requiring the payment of money. It is not possible, for instance, to obtain an interim money judgment against a defendant. Interim injunctive orders take one of two forms:

- temporary restraining orders, which are usually reserved for emergency situations, may be issued on an *ex parte* basis in as little as a few hours but expire after a limited period of time (usually 14 days); and
• preliminary injunctions, which are typically sought in non-emergency situations, remain in place for the duration of the litigation and require notice and a hearing with the opposing party. Individuals may be represented by an attorney or elect to represent themselves in these proceedings. Corporate parties must typically be represented by an attorney.

To obtain an interim injunctive relief, a party must file a motion accompanied by evidence (e.g. affidavits, documents, etc.) establishing that the party is entitled to relief. The court may also order a hearing at which testimony on the motion will be presented. A party applying for interim injunctive relief must generally prove that:

• the party is likely to succeed on the merits of its case;
• an award of money damages would not be sufficient to cure the alleged injury;
• on balance, equity favors the issuance of the injunction; and
• the public interest favors the injunction.

Permanent injunctive relief may also be awarded as part of a judgment on the merits. To obtain a permanent injunction, a party must prove that it is entitled to relief based on the four factors listed above.

In federal court and in some states, an immediate appeal is permitted from an order granting or denying injunctive relief. The timeframes for such appeals are similar to those described in Appeals, though a party may request expedited consideration if an issue is time-sensitive.

**Prejudgment attachments and freezing orders**

No common law right to prejudgment attachment exists in the US. Attachment may be available as a prejudgment remedy under state statutes addressing the subject. Federal courts may attach property to the extent permitted by the law of the state in which they sit. A request for a prejudgment attachment or freezing order must be requested from the applicable trial court. A request for attachment or a freezing order may be made at the time the complaint is filed but cannot be requested prior to a suit being commenced. When prejudgment attachment is authorized, courts typically have discretion to issue prejudgment writs of attachment that prevent a defendant from disposing of or hiding tangible or intangible assets that may be used to satisfy any judgment the plaintiff ultimately obtains. A plaintiff seeking prejudgment attachment may be required to post bond to cover any damage caused to defendant's property in the event that the plaintiff does not succeed on its claims.

The criteria for the issue of a prejudgment writ of attachment are similar to the ordinary principles for granting injunctive relief, although courts have recognized that attachment is a severe remedy that is appropriate only if the plaintiff produces evidence showing an appreciable risk of being unable to enforce a future judgment. Relief may not be sought on an *ex parte* basis. It is primarily requested in the context of a pending litigation, not prior to a suit being filed. Because the procedure seeks to attach assets prior to a judgment being entered, a court is likely to require a high burden of proof showing that the plaintiff will be entitled to relief once the litigation concludes.

Broadly and generally, an applicant must show that:

• the applicant is likely to prevail on the merits of its case;
• the refusal of a writ of attachment will give rise to a real risk that the plaintiff will be unable to enforce any judgment rendered in its favor;
• the balance of the equities favor the attachment; and
• the public interest favors the attachment, meaning that attachment must further an important interest beyond the claims in the litigation itself.

**Notable State Variations**

**California.** By statute, only property located in California is subject to attachment. Property outside the state may not be attached by a California court.

**Delaware.** The banking and insurance industries are exempt from prejudgment attachment, both as to deposits held in Delaware as well as any asset owned by an entity that qualifies as a bank.
Illinois. By statute, Illinois requires that a plaintiff requesting a writ of attachment post a bond equal to double the value of the property to be attached.

Costs

Applicable procedural rules in most state and federal courts provide for costs (not attorneys' fees) to be awarded to the prevailing party following entry of final judgment. Costs eligible for recovery, which usually range from a few hundred to a few thousand dollars, include:

- court filing fees;
- fees for serving process;
- witness fees and transportation expenses;
- transcript preparation fees;
- copying fees; and
- compensation for court-appointed experts and interpreters.

Attorney's fees and other costs (e.g. expert witness fees) are recoverable in only limited circumstances. For instance, fees may be expressly authorized by the statute under which a particular claim is being litigated, or a contract between the parties may authorize the court to award them. When authorized, the amount of fees awarded varies depending on the claim at issue and the complexity of the case. In simple cases, a fee award may be limited to a few thousand dollars. In highly complex litigation, courts have awarded fees ranging into the millions of dollars.

Class actions

A putative class action proceeding may be commenced by a named plaintiff as a representative of unnamed parties who have the same interest in the proceeding. The named plaintiff (or class representative) must seek leave of the court to certify the class and proceed as a class action. To obtain class certification, the class representative must produce evidence of a sufficiently numerous class (approximately 40 members is usually sufficient) and demonstrate that common legal issues are shared on a class-wide basis, such that resolution of those issues would materially advance all members' claims. Class members are not required to demonstrate identical claims or damages, but must show sufficient commonality across the class that individual issues will not make a class proceeding unwieldy. Typically, a motion to certify a class is made following a period of discovery devoted to class issues, such as identification of the class members, common issues, and shared damages theories. An appeal of a class certification decision may be taken if permitted by the appellate court.

As a practical matter, most class actions in the US are brought with the expectation of settlement. Common claims for class treatment include consumer protection, antitrust, securities actions, mass tort, and civil rights matters, in which individual damages are typically small (perhaps as little as a few dollars) but, in the aggregate, create significant liability exposure. Moreover, while individual class members may recover only small amounts, class counsel may end up recovering a large award of attorney's fees. In any event, class actions typically proceed up until the class certification stage, at which point they are often dismissed or settled.

Since 2005, an increasing number of class actions have been heard in federal court due to the Class Action Fairness Act, which relaxed requirements for bringing state-law class actions in a federal forum. Currently, any class action in which total exposure exceeds USD5 million may be brought in federal court if the defendant and at least one of the class members are citizens of different states.

Once a class is certified, all individuals who satisfy the class definition become members of the class. Those individuals must be notified of their status as class members and given the opportunity to opt out of the class proceedings, or to object to any settlement. All class members who do not opt out will be bound by the judgment of the court or by any approved settlement.

Notable State Variations

California. A denial of class certification is immediately appealable as a matter of right, since such an order effectively ends the litigation.

Texas. Orders granting or denying class certification are immediately appealable as a matter of right.

Key contacts
Disclaimer

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please contact your usual DLA Piper contact.