FRANCE

Global litigation guide

DLA PIPER

About

Welcome to The Global Litigation Guide (the **"Guide"**) which has been prepared by DLA Piper's civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper's guide to Legal Professional Privilege and (coming soon) DLA Piper's guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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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 the Labour Courts and the Commercial Courts.

The civil court system is composed by 165 Judicial Courts (*Tribunaux judiciaires*). These courts result from the merger, in 2020, of the District Courts (*Tribunaux d'Instance*) and High Courts (*Tribunaux de Grande Instance*). Since then, the Judicial Court has been the sole court of first instance in civil, criminal and commercial matters, with jurisdiction to hear disputes that have not been assigned to another court, regardless of the value of the claim. Some Judicial Courts specialize in complex cases or cases involving a larger number of parties.

Where the claim is for payment of a sum not exceeding EUR5,000, it is compulsory to attempt conciliation, mediation or a participatory procedure before going to court, or the claim will be inadmissible.

In some cities, there is a Local Court (*Tribunal de proximité*), whose jurisdiction is similar to those of the former District Court, i.e. civil cases involving less than EUR10,000.

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 merchants. The judges in both the Labour Courts and the Commercial Courts are non-professional judges who are elected members of their community.

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

In France, the court proceedings are conducted in French. However, the International Chamber of the Commercial Court of Paris allows the parties, subject to certain conditions, to use English during the proceedings, and to obtain a translation of the judgment in English.

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 cause 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 Judicial Court and Commercial Courts, except for claims under EUR10,000, undetermined claims or claims arising from the performance of an obligation not exceeding EUR10,000. Nor is representation necessary before the Local Courts or 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 normally files 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, in particular in matters where a technical judicial expert is appointed by the Court. 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 (pursuant to Article 145 of the French Code of Civil Procedure):

- there is a legitimate reason to preserve or to establish the evidence before any trial; and
- the resolution of the dispute depends on this evidence.

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. Only the investigating measures provided by the French Code of Civil Procedure may be ordered by the judge, who must ensure that the measure is not intended to supplement a lack of evidence on the part of the plaintiff. A recourse against such *ex parte* orders can be made before the judge having ordered the investigation measures to allow an adversarial debate.

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 (ie 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. The defendant is also informed, in the summons issued to him, to appear at the indicated hearing with an attorney.

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 must 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 must be filed within fifteen days for non-contentious matters. 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 law, or legal or procedural principles or rules. Such appeals must 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 re-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.

In most cases, the provisional enforcement (*exécution provisoire*) of the judgment applies. Apart from a few exceptions, appealing the judgment will not suspend the effect of the judgment.

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 stop an obvious unlawful disorder, prevent either immediate damage or irreparable loss and/or to safeguard the rights of the claimant. The interim relief judge can also order the payment of a debt when there are no serious grounds to challenge it, in which case it is an interim payment. Applications for interim relief may be sought before or pending a resolution of 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.

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. As a general rule, the interim order relief order is enforceable by law and the appeal does not suspend the effect of an interim relief measure.

Prejudgment attachments and freezing orders

A 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 Judicial 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 resolution on the merits.

Attachments may target any kind of asset, including immoveable 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 in an adversarial trial.

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 allocated will depend on the amount of the litigation at stake and will amount to EUR2,000 to EUR20,000, except for matters relating to intellectual property or arbitration awards/international matters, 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 into 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.

Further to the Collective Redress Directive (UE) 2020/1828, aimed at introducing in all European Member States a cross border class action system, France will take the opportunity of implementing the Directive to adapt its class action system. It is expected that the new law would increase the conditions to be fulfilled by the associations to be allowed to bring a class action, in order to make the class actions more efficient in France.

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