

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2008

A practical insight to cross-border Litigation & Dispute Resolution



Published by Global Legal Group with contributions from:

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Latvia got? Are there any rules that govern civil procedure in Latvia?

There is a civil law system in Latvia. Civil, administrative and criminal cases are examined by separate procedural rules. Civil procedure in Latvia is governed by the *Civil Procedure Code (Civilprocesa likums)*.

1.2 How is the civil court system in Latvia structured? What are the various levels of appeal and are there any specialist courts?

There is three-level court system in Latvia formed by:

- 34 District/City Courts.
- 5 Regional Courts.
- The Supreme Court, which consists of:
 - the Civil Matters Department; and
 - the Senate.

District/City Courts examine all civil cases, except those under the jurisdiction of Regional Courts (which are disputes in respect of real property, claims exceeding LVL 150,000.00 (approx. EUR 213,430.80), patents, trade marks and insolvency). Rulings of first examination by District/City Courts might be reviewed by Regional Courts such as in appeal instances. In addition, rulings of first examination by Regional Courts might be reviewed by the Civil Matters Department of the Supreme Court such as in appeal instances. The rulings after the appeal review either by the Regional Courts or the Civil Matters Department of the Supreme Court might be reviewed in cassation instance by the Senate of the Supreme Court.

There are no specialist courts (commercial courts and such like) in Latvia, therefore all civil disputes are examined by the general Courts according to their jurisdiction.

1.3 What are the main stages in civil proceedings in Latvia? What is their underlying timeframe?

The main stages in civil proceedings before the Latvian courts are:

- bringing of action;

- securing of claim, including freezing of assets and property arrest (optional);
- preparation for trial;
- trial; and
- judgment.

The timing of a case depends on the type of case. Some may be settled within one month and others may last for several years. On average, cases that are not appealed last up to six months.

1.4 What is your local judiciary's approach to exclusive jurisdiction clauses?

Latvian courts neither accept claims in case of foreign dispute resolution forum, nor recognise the ruling of foreign courts in case of breach of an exclusive jurisdiction clause in favour of a Latvian court. Contracting parties are entitled to determine the court of first instance, where all disputes in respect of the contract or its performance shall be decided. However there are exceptions where parties are not entitled for such exclusive jurisdiction clauses - for example the disputes regarding real property shall be brought only to the jurisdiction of location of such real property.

1.5 What are the costs of civil court proceedings in Latvia? Who bears these costs?

Litigation costs vary considerably depending on the type, size and complexity of the civil proceeding. In general the court fee will be calculated from the claim amount, which may be 0.5% - 15% depending on the amount of claim. Attorney's fees in general are calculated on a per hour basis in Latvia. The bailiff, expert, translation/interpretation and document legalisation fees shall be considered by the party willing to litigate as well. In general the loser of the proceeding shall bear the costs of the winning party. Attorney's fees shall be borne by the losing party not exceeding 5% of the claim amount.

1.6 Are there any particular rules about funding litigation in Latvia? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

There are no particular rules about funding litigation in Latvia - a lawyer and his client are free to set up any fee arrangements by their agreement, which may include contingency/conditional fees. There are no rules on security for costs in Latvia either.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in Latvia? What is their scope?

There are no pre-action procedures in place set by the Civil Procedure Code. Such thing as the provision of a 'letter of claim before action' is not mandatory for proceedings in Latvian court.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The general limitation period for contract and damage claims is 10 years in Latvia. If so provided by statutory act, the limitation periods in particular cases can be different - for example 2 years for employment claims. The general principle is that the time starts to run from the breach of the contract or the date on which the cause of action occurred. By some limited reasons the limitation period can be either suspended (by period of war) or started anew again (for example reminder to the debtor). The limitation periods applied to different classes of claim for the bringing of proceedings before the civil court are treated as an issue of substantive law, therefore such periods are not subject to the renewal tools by application of the *Civil Procedure Code*.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Latvia? What various means of service are there? What is the deemed date of service? How is service effected outside Latvia? Is there a preferred method of service of foreign proceedings in Latvia?

If there are no grounds to refuse or suspend the commencement of a proceeding, the civil proceeding shall be commenced by the court within 3 days from the statement of claim being received from the plaintiff. After this the court shall send the statement of claim to the defendant immediately by registered mail, as well set the term to submit the statement of defence 15-30 days from the sending of the statement of claim. The courts prefer to perform the service of a summons by registered mail, although other means are provided by the *Civil Procedure Code* such as telegram, fax and courier. The *Civil Procedure Code* does not set the exact term by which such service shall be provided before a hearing - in general this is approximately one month, but not less than one week. In respect to service outside the jurisdiction, the Latvian court shall consider the numerous conventions (*1954 Hague Convention*, *1965 Hague Convention*, *1970 Hague Convention*, and 9 bilateral conventions) and *EC Regulation 1348/2000* and *EC Regulation 1206/2001*.

3.2 Are any pre-action interim remedies available in Latvia? How do you apply for them? What are the main criteria for obtaining these?

There are several pre-action interim remedies in Latvia for the securing of a claim, which includes freezing of assets, property arrest and establishment of prohibitory endorsements in public registers. Those can be applied either during the proceeding or prior to the bringing of the action. The criteria for the obtaining the interim remedies during the proceeding is if there is reason to believe that the execution of the court judgment may become problematic or

impossible. The criteria for the obtaining such remedies prior to the bringing of the action is if the debtor avoids his obligations by replacing or alienating his property, by leaving his place of residence without informing the creditor, or by performing other actions in bad faith. Other parties of the proceeding shall not be informed that such a decision is taking place.

3.3 What are the main elements of the claimant's pleadings?

The main elements of the pleadings in Latvia are:

- the court, to which the statement of claim is addressed;
- the names and addresses of the parties;
- the infringed rights;
- the claim amount if any, and its calculation thereof;
- reasoning and evidence;
- applicable law;
- claims;
- list of documents attached; and
- the date.

In case any element is lacking, the court is entitled to not process the statement of claim. In this case the judge shall take a reasoned decision and set a time limit for rectifying the deficiencies (no less than 20 days). If such deficiencies are not rectified in the set time limit, the statement of claim shall be returned to the submitter.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings can be amended in writing. Amendments can be made at any moment up until the commencement of the case substance review, which starts with the report of judges regarding circumstances of the matter in the hearing.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The main elements of a statement of defence are:

- whether the defendant admits the claim fully or in a part;
- objections against the claim and substantiation thereof;
- evidence and the applicable law;
- petition to accept the evidence or require it; and
- other significant facts for the review of matter.

The defendant is entitled to bring a counterclaim up until the end of the examination period of the case substance in the hearing of first instance. A court shall accept such counterclaim if:

- the set-off of the claim and the counterclaim is possible;
- the satisfaction of the counterclaim excludes the satisfaction of the claim in whole or in part; or
- the counterclaim and the claim are related in a way, the joint examination of them would favour quicker and more correct adjudicating of the case.

4.2 What is the time-limit within which the statement of defence has to be served?

The court shall set time-limit between 15 to 30 days for the

submission of the statement of defence. This period starts to run from the day the court has sent the statement of claim and the request to provide the statement of claim. In case the defendant fails to submit his statement of defence on time, he may be fined.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

The defendant on his own is able to pass on liability by bringing an action against a third party in separate proceedings only.

4.4 What happens if the defendant does not defend the claim?

In case the defendant fails to defend the claim, a default judgment may be entered against him. A default judgment is a judgment, which is entered into at the request of plaintiff by the court of first instance in matter, where the defendant has failed to provide explanations regarding the claim and has failed to attend the hearing pursuant to the court summons without first notifying the reason for their failure to attend.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant is entitled to dispute the court's jurisdiction by submitting a petition for the change of jurisdiction to another court.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

The *Civil Procedure Code* provides a mechanism where a third party can be joined into ongoing proceedings, if the rights and duties of such third party may be affected by the judgment. The joinder is possible up until the end moment of the hearing of the case substance in first instance. Such third parties have all procedural rights, with the exception of modifying the subject-matter or the amount of the claim, admitting the claim or entering into a settlement; third parties can also not require the execution of a judgement. Third parties with separate claims have the same procedural status as the plaintiff. The request to join the third party in ongoing proceedings shall be addressed to the court, which determines the joinder.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

A plaintiff is entitled to join several mutually related claims in one statement of claim. The court is entitled to consolidate several sets of proceedings into one, if there are several sets of proceedings before the court between the same parties, or if a plaintiff brings an action against several defendants, or if several plaintiffs bring an action against the same defendant. Such consolidation is permitted if this favours the review of the case and if parties do not object to this.

5.3 Do you have split trials/bifurcation of proceedings?

The court is entitled to require a plaintiff to split the case into several

claims if the court finds that separate reviews of such claims will be more preferable. The court is entitled to separate one of several claims, if the review of the case has become difficult or impossible.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Latvia? How are cases allocated?

There is no particular case allocation system before the civil courts in Latvia.

6.2 Do the courts in Latvia have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have the following management powers:

- controlling the process of the case in a cost-conscious and efficient manner by setting a procedural timetable and giving other appropriate directions;
- notifying parties that no evidence for some facts has been submitted and setting a time period for the submission thereof;
- encouraging the parties to arbitrate in ADR institution; and
- encouraging the parties to reach a settlement.

The parties can make the following interim applications:

- securing a claim, including freezing of assets and property arrest;
- securing evidence;
- requiring the court to request the documentary evidence;
- ordering the expert-examination; and
- joining a third party to the ongoing procedure.

For some interim applications court fees exist. For example for securing the claim (such as freezing of assets) the court fee of LVL 20.00 (approx. EUR 28.46) shall be paid; however if the claim amount exceeds LVL 4,000 (approx. EUR 5,691.49), a fee of 0.5% of the claim amount shall be paid.

6.3 What sanctions are the courts in Latvia empowered to impose on a party that disobeys the court's orders or directions?

The courts in Latvia are empowered to impose on a party that disobeys the court's orders or directions the following sanctions:

- a warning;
- expulsion from the court room;
- a fine; or
- enforced delivery of person to the court.

6.4 Do the courts in Latvia have the power to strike out part of a statement of case? If so, in what circumstances?

The courts of Latvia have no power to strike out part of a statement of case. As far as formal requirements are observed, the court shall process the statement of case.

6.5 Can the civil courts in Latvia enter summary judgment?

Courts in Latvia are not entitled to enter summary judgment.

6.6 Do the courts in Latvia have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The courts in Latvia have no powers to discontinue proceedings; only the plaintiff is entitled to discontinue his claim in whole or in a part.

The court shall stay the proceeding if:

- a party to the proceeding died (natural person) or ceased to exist (legal person);
- a party to the proceeding lost his legal capacity;
- a party to the proceeding is not capable of litigation because of his serious illness, old age or disability;
- the court decides to submit the application to the Constitutional Court of Latvia; or the Constitutional Court has initiated a case on its own by the request of the party;
- the court assigns for the preliminary ruling from the European Court of Justice; and/or
- the review of the case is impossible due to a prior decision in another case in civil, administrative or criminal procedure.

The court is entitled to stay the proceeding if:

- a party to the proceeding is abroad due to long-term business trip or state service;
- a search of the defendant has been announced;
- a party to the proceeding is unable to participate in the proceeding due to illness; or
- the parties to the proceeding have agreed to stay the proceeding.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Latvia? Are there any classes of documents that do not require disclosure?

The court is entitled to request the documentation, tapes and such like evidence from the opposite party and any other person or state authority as well, if the party of the proceeding requires it to do so with the good reason. The party, who requests the court to require the documentation, shall describe the document and provide the reasons why this document is in possession of the person referred to. If the person is not able to provide the requested document on time or at all, such person shall notify the court in writing of the reasons. Otherwise such person might be fined. If the party of the proceeding refuses to provide the requested document but does not deny he has it, the court is entitled to presume that the facts provided in such document are as proved.

7.2 What are the rules on privilege in civil proceedings in Latvia?

A person is entitled to refuse to provide the requested documents because of reasons of legal profession, confidentiality, state secret and such like.

7.3 What are the rules in Latvia with respect to disclosure by third parties?

The rules with respect to disclosure are general and the same ones apply to the parties of the proceeding and any third party/state authority. Please see question 7.1.

7.4 What is the court's role in disclosure in civil proceedings in Latvia?

After the application of a party, the court decides if the request for documentation shall be made and, if so, the court will oversee the performance of such request.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Latvia?

The documents provided at the request of the court shall be used only for the purposes of a particular proceeding. After the judgment comes into effect, the person who submitted the requested document is entitled to apply in writing for the original(s) of the document(s) to be returned to him.

8 Evidence

8.1 What are the basic rules of evidence in Latvia?

Each party shall prove the facts upon which they substantiate their claims. In general evidence shall be submitted to the court no later than seven days before the court hearing. No evidence shall have a predetermined effect that would be binding upon the court. No evidence is necessary to prove the facts not challenged by the opposing party.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The Civil Procedure Code may admit the following types of evidence:

- the statement of a party of the proceeding (if such facts are confirmed by other evidence);
- testimony of a witness;
- documentary evidence (including audio and video tapes, CD's and such like);
- physical evidence;
- expert evidence; and
- the opinion of the state authority.

As a general rule hearsay is not admissible as evidence. Certain facts must be proved by particular documents only.

Parties are entitled to apply to the court to order expert examination. In this case each party is entitled to provide questions to be answered by the expert, but the final scope and edition of questions to the expert shall be decided by court. It is done by making a separate order in writing addressed to the expert. The expert opinions made before the proceedings are admissible as evidence as well.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

The calling of witnesses is made by the court in accordance with the respective application by a party. If a witness fails to appear in hearing, he might be enforced to come. Witness statements in writing shall be considered as evidence only if made in scope of securing of evidence - that is if such witness statement was made by a judge examining the respective witness.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Latvia?

The parties make applications to the court to make orders either to call witnesses, to provide documentation from other persons, to perform expert examination, to secure evidence and such like. The court is entitled to inform the party that the some facts have not been proved by evidence and set the term for the respective submission.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Latvia empowered to issue and in what circumstances?

Judgments can be issued either for the recovery of an amount of money, the transfer of goods, or the performance of a certain action. In case the defendant is absent, the court may issue a default judgment. In case the parties agree on a settlement, the court provides a decision approving the terms of the settlement - this decision can be executed as a judgment. The court is empowered to issue several types of orders such as requesting documents from persons, joining a new party to the proceeding, establishing interim measures, applying procedural fines and sanctions and such like.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Only rulings to recover loss suffered and lost profit can be made by Latvian Civil Law. The interest from the dept can be awarded by the court; in case the rate is not stipulated in a contract, the rate can be calculated based on the *Civil Code* (approx. 6-13% per year). Costs of litigation shall be compensated by the losing party; however the lawyers' fees shall be compensated in an amount not exceeding 5% of the amount of the claim.

9.3 How can a domestic/foreign judgment be enforced?

When a domestic judgment comes into effect, the beneficiary is entitled to apply in writing to the court to provide Execution Writ. Based on this document the state officials are entitled to compulsory execution. The foreign judgment shall be recognised by the court at first. The *Civil Procedure Code* provides several reasons why such judgment shall not be recognised - for example, lack of jurisdiction of a foreign court. If the foreign judgment is recognised, the court issues a decision about recognition and execution of the foreign judgment, which might be appealed. When such decision comes into effect, the beneficiary can execute it in the same way as a domestic judgment.

9.4 What are the rules of appeal against a judgment of a civil court of Latvia?

The judgment of first instance may be appealed within 20 days from its announcement by providing reasons why it is wrong. This is done by the submission of an appellation petition to the same court, which issued the judgment. If there is no contradiction to the formalities required by the *Civil Procedure Code*, the court proceeds the case to the higher level court. The appellation court reviews the case once again in the range requested by the party, but not exceeding the scope of the initial claim. The judgment of the appellation court may be appealed in cassation instance within 30

days from its announcement by providing reasons how the court wrongly applied the rules of material or procedural law.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Latvia? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

Parties are entitled to agree to settle their dispute in arbitration, which might be either *ad hoc* or permanent. If there is an arbitration agreement clause the court shall not accept the case covered by it. The award of the arbitration is not subject to appeal. If such award is not performed voluntarily or made in accordance with the rules of law, the court shall grant the execution writ and therefore such award shall be executed mandatory in the same way as a court judgment. The courts shall assist in applying interim measures, such as freezing of assets.

1.2 What are the laws or rules governing the different methods of dispute resolution?

There is a separate chapter provided in the *Civil Procedure Code* in respect to dispute resolution in arbitration. There are rules provided regarding general rules on the conclusion of an arbitration clause, the establishment of arbitration and its procedural requirements, and the execution of an arbitration award.

1.3 Are there any areas of law in Latvia that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

There are several areas of disputes, which shall not be resolved in arbitration. Otherwise such arbitration award will not be accepted by the court and consequently will not be enforceable. In general it applies to: disputes where the interests of third parties may be affected; the party is the state or a municipal institution; in respect to amendments in civil registers; and in some instances in respect to family, real property, leases, employment and insolvency matters.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Latvia?

There are 143 permanent arbitrations in Latvia for the moment. The major dispute resolution institutions are the Latvian Chamber of Commerce and Industry Court of Arbitration (Latvian Chamber of Commerce and Industry Court of Arbitration (*Latvijas Tirdzniecības un rūpniecības kameronas šķirejtiesa*), Riga International Arbitration Court (*Rīgas starptautiska šķirejtiesa*) and Court of Arbitration of the Association of Commercial Banks of Latvia (*Latvijas Komerčbanku asociācijas šķirejtiesa*).

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Domestic or foreign arbitration awards made in accordance with the

Civil Procedure Code and accepted by the court are binding and enforceable in the same way as a court judgment.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

It is quite common to use arbitration procedures unfairly and in bad faith in Latvia. Therefore there are trends to provide more and more regulation for this type of dispute resolution. The Government is working on a draft *Arbitration Act* and amendments to the *Civil Procedure Code* in this respect. At least in this legislation stage *inter alia* the possibility to appeal arbitration awards to the courts is provided.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Latvia?

It should be noted that only arbitrators included in the list of permanent arbitrations may be chosen by parties. The rare exception from this is the *Latvian Chamber of Commerce and Industry Court of Arbitration (Latvijas Tirdzniecības un rūpniecības kameras Šķirejtiesa)*, where parties are able to choose any person they wish as arbitrator. The statements of parties, documental and physical, and expert evidence might be used, but the testimony of witnesses is not allowed as evidence in arbitration procedures. The arbitration clause included in an agreement loses its effect if such agreement is ceded (assigned) to another person (*Supreme Court Decision No SPC-28 of 12.05.2004*). In case one of the parties of an agreement is a consumer, there is a considerable chance that the arbitration clause could be invalidated as an unfair provision of the contract (*Supreme Court Decision No SPC-13 of 03.01.2007*).



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The Gencs Valters Law Firm is a full service, general practice international business law firm focused on tax, litigation, corporate, mergers and acquisitions, competition, finance and intellectual property law.

The firm consists of a team of 12 professional lawyers and tax advisers and has represented the government of Latvia in an international arbitration case in Denmark and Sweden.

Our publicly disclosed representative clients comprise: Statoil ASA (Denmark), Nestle SA (Switzerland), Yamaha (Japan), Beiersdorf (Germany), L'Oreal (France), Wyeth Pharmaceuticals (UK), Firebird Republics Fund (USA), General Motors (USA) Coca-Cola (USA), McDonalds (USA).

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