



# The Legal 500 Country Comparative Guides

## Lebanon

# LITIGATION

### Contributor

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Lebanon.

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## LEBANON LITIGATION



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### 1. What are the main methods of resolving commercial disputes?

The main methods of resolving disputes in Lebanon are litigation and arbitration. Mediation is another method that has been recently endorsed through the enactment of Law 82, which entered into force on 18 October 2018 regarding judicial mediation. To date, litigation is the preferred method for individuals and small to large corporations, as well as arbitration (in commercial disputes) for medium to large corporations.

### 2. What are the main procedural rules governing commercial litigation?

Litigation is governed by the rules of the Lebanese Code of Civil Procedure (the "LCCP"), enacted by Decree-Law No. 90/1983 (as amended). Generally speaking, the procedure is inquisitorial in nature and the legal process is conducted primarily through written submissions.

Criminal litigation - which is mainly governed by the rules of the Lebanese Code of Criminal Procedure - is not discussed in this chapter that focuses on commercial litigation.

### 3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Courts in Lebanon are divided between judicial courts (dealing with private law matters, including criminal matters) and administrative courts (dealing with public law matters, notably matters involving the State and other persons of public law).

When it comes to administrative courts, the Council of State is currently the sole court that hears disputes falling under the ambit of public law. To date, lower level administrative courts have not been established.

When it comes to judicial courts - which are in charge of adjudicating civil and commercial disputes -, these are

divided into:

- Courts of First Instance: which are presided over by a single judge or a panel of three judges, and are in charge of examining civil law claims. The "sole judge court" usually examines lower value claims than those heard by a panel of three judges.
- Courts of Appeal: which are based in the administrative centre of each district (Mouhafazat) and review the decisions of lower courts (ie, the Courts of First Instance).
- The Court of Cassation: which is a court of law, as opposed to a court of fact, headquartered in Beirut. It serves as the final court of appeal.

From a subject-matter perspective, aside from the criminal courts, judicial courts are divided into chambers depending on the nature of the dispute as follows:

- The Commercial Chamber is in charge of adjudicating commercial and financial disputes between corporate entities;
- The Financial Chamber is in charge of adjudicating financial disputes between individuals; and
- The Personal Statutes Chamber is in charge of adjudicating matters relating to nationality, inheritance, matrimonial issues, etc.
- In addition to the above, there are special chambers which deal with lease issues, real estate issues, labour law and bankruptcy matters. There is also a "sole judge court" for urgent matter proceedings, and an Enforcement Bureau which deals with enforcement proceedings.

### 4. How long does it typically take from commencing proceedings to get to trial?

The timeframe is affected by various factors such as subject-matter and complexity (e.g. the need to appoint an expert), as well as other factors which may or may

not be within the parties' control. Typically, the time between commencing proceedings and getting to trial ranges between 2 and 6 months in normal circumstances and if notification is not delayed.

### **5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

Pursuant to Article 484 LCCP, the civil hearings are public unless the court decides on its own volition, or upon any of the Parties' request, to keep a hearing private in order to preserve public order or for family privacy; however, judgments are publicly announced (even when the proceedings themselves are closed). TV cameras and photographers are not permitted in court.

The filings in judicial courts are public and the parties are not anonymised in judgments.

### **6. What, if any, are the relevant limitation periods?**

Limitation periods concerning private law actions vary from action to action and are regulated by the Lebanese Code of Obligations and Contracts, the "LCOC".

In general, the limitation period in civil matters is ten years (Article 349 LCOC). However, limitation periods of shorter duration apply for some specific types of disputes (Articles 350-352 LCOC).

The limitation period generally runs from the day the "debt" (i.e. generally the obligation) becomes due and can be invoked before the courts by a party, and this period restarts in certain circumstances such as if the debt is acknowledged.

Procedural laws allow the parties to request that the lawsuit be dropped if the proceedings remain inactive for a period of two years, starting from the date of the last valid procedural step (Article 509 LCCP). The same decision may be taken by the court, without a request from any party, if the proceedings remain inactive for a period of five years (Article 512(2) LCCP).

### **7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

The LCCP and the courts do not impose any rules on the parties in relation to pre-action conduct, *per se*. However, a notice is usually sent to the defaulting party

to remedy the breach before initiating proceedings. Such notice usually provides a time limit for the defendant to reply and remedy the breach before the plaintiff will commence judicial proceedings.

Sometimes, the notice is required for the success of a claim on the merits, such as in claims for damages for breach of contract. In turn, the contractual creditor in some instances is exempted from sending such notice, namely when the performance of the obligation becomes impossible, or when the obligation was to return an item/asset that was stolen, or when the term of the obligation has lapsed (Article 258 LCOC).

### **8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

Proceedings in civil and commercial matters are commenced by filing a submission before a clerk of the relevant court's office.

The plaintiff should have the requisite legal standing to sue/file a claim (Article 9 LCCP). The initial submission should be filed before the court which has jurisdiction and should include the following information (Article 443 LCCP):

- the name of the court before which the claim is filed;
- the plaintiff's and the defendant's respective names, professions, residences, and the name of their representatives, if any;
- the facts, legal grounds, evidence and relief sought;
- the date of the claim, and the plaintiff's signature or the signature of the plaintiff's legal representative; and
- the exhibits enclosed with the submission.

Service is necessary, except where the law explicitly allows for *ex parte* proceedings.

The rules governing service are set out in Articles 397 *et seq* of the LCCP. Service is made by a court agent, usually a bailiff but also sometimes a member of the police or a member of the interior security forces. A court clerk is responsible for drafting the service slip, and a bailiff (or police or security officer) for delivering it.

However, in civil matters, while court agents are the ones who effect service, in practice, the *initiative* of service usually lies on the parties, for example the plaintiff when it comes to service of the statement of claim on the defendant.

## 9. How does the court determine whether it has jurisdiction over a claim?

Jurisdiction is governed by Articles 72 *et seq* of the LCCP.

When it comes to jurisdiction *ratione loci*, the general rule is that unless otherwise stated by law, the court of the defendant's domicile has jurisdiction (Article 97 LCCP).

In disputes arising out of the performance of a civil or commercial contract, jurisdiction is granted to the court:

- where the effective residence of the defendant is located;
- of the defendant's chosen domicile;
- where the contract was concluded and where one of its principal obligations was to be performed; or
- where the contract was entirely performed (Article 100 LCCP).

For disputes relating to a legal entity, the court where the legal entity's head offices are located has jurisdiction. If a branch of the legal entity is the party concerned with the dispute, then the court where the branch is located may examine the dispute (Article 101 LCCP).

## 10. How does the court determine what law will apply to the claims?

For contracts, the parties are granted the liberty of determining which law applies to their contract, subject to mandatory provisions of public policy of Lebanese law. Absent a determination by the parties, the courts apply the law where the contract was to be performed in its entirety or the law where the contract was concluded and where a main obligation under the contract should have been performed.

More generally, without any foreign element in a dispute presented before the Lebanese courts (e.g. no foreign nationality of one of the parties, no foreign place of performance of a legal act - which is an act of will with the intention of creating legal effects -, etc.), the courts would directly apply Lebanese law.

When a dispute with a foreign element is presented before the courts, the principle of personality is applied in some cases (i.e. the courts apply the law of the country whose national is at the centre of the dispute) and the principle of territoriality is applied in others (i.e. the courts apply the law of the country of the location of the asset/facts object of the dispute). In family law matters, the principle of personality applies, such that

the courts would apply the law of the country whose national is at the centre of the dispute. In real estate matters, the principle of territoriality applies, such that the courts would apply the law of the location of the real property.

In this context, Article 142 LCCP states that if the party bringing the claim governed by a foreign law fails to bring proof of the content of that law, then the courts shall apply the Lebanese law to the claim.

## 11. In what circumstances, if any, can claims be disposed of without a full trial?

Law No. 154 dated 17/08/2011 introduced into the LCCP a chapter on "the summary procedure", containing Articles 500-bis-1 to 500-bis-9 governing proceedings where claims on the merits may be disposed of without a full trial.

Pursuant to Article 500-bis-1 LCCP, claims relating to persons or relating to an asset, whether movable or immovable, the value of which does not exceed 30 times the minimum wage (i.e. around LBP 20,000,000 at the time of writing of this chapter), are subject to the summary proceedings rules.

Pursuant to Articles 500-bis-2 and 500-bis-3, there is only one round of exchange of submissions with shortened time periods, following which, pursuant to Article 500-bis-4, the judge must issue their decision within 2 weeks of the last submission.

Also, outside of the above case, by agreement the parties may submit to the court a request to shorten the statutory deadlines for the exchange of submissions in view of expediting the litigation.

## 12. What, if any, are the main types of interim remedies available?

The trial judge and the judge of urgent matters can, upon the request of any of the parties, either in consideration of a guarantee or without it, order provisional and conservatory measures for the protection of rights and the prevention of harm.

The available interim measures are not determined restrictively and vary as they may be required. These include but are not limited to:

- affixing seals;
- making an inventory of assets;
- ordering sequestration;
- selling perishable assets; and

- making a report on the *status quo* of a situation (Article 589 LCCP).

Generally, an applicant has to show that there is imminent harm that necessitates interim relief as a matter of urgency to protect his rights. For instance, a party can seek to appoint an expert to make a report of the *status quo* if they fear the other side might seek to dissipate certain evidence.

It is also possible to apply *ex parte* for a provisional seizure/attachment before the Enforcement Bureau judge in respect of debts which are due and which are established by a deed or simply likely to exist in some cases. Such seizure would be applied to moveable and immovable assets of the debtor in Lebanon.

### **13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

In Lebanon, the litigation process is conducted primarily through written submissions.

After a claim has been commenced (i.e. an initial submission/statement of claim has been filed by the plaintiff), a defendant has 15 days to file his answer submission/statement of defence along with all supporting documents (Article 449 LCCP).

Following notification of the statement of defence to the plaintiff, the plaintiff has 10 days to file a reply submission (Article 452 LCCP).

Following notification of the reply submission to the defendant, the defendant in turn has 10 days to file a rejoinder submission (Article 452 LCCP).

This would conclude the normal exchange process. Article 453 states that upon the expiry of the time limitations set out in the previous provisions (i.e. the 10 days for the rejoinder submission), none of the litigants may submit any response unless he provides an acceptable excuse or reason for making a new submission. In this case, the president of the court or the sole judge would set a time limit for making the submission and for responding to (if necessary).

Also, Article 455 LCCP provides that the court may shorten the time limit for exchanging submissions in cases that require haste, provided that the time limit it sets is not less than twenty-four hours. In other cases, it may extend such time limits at the request of one of the litigants, if it finds a justification for that. The court issues its decision to shorten or extend the time limits in

the Court Chambers.

The same applies for counter-claims, starting with the statement of the counter-claim.

### **14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

According to Article 203 LCCP, a party may request the opponent to produce any document essential for the outcome of the dispute, provided that:

- the law allows the party to request such document production or deliverance;
- if the document is common between the requesting party and the opponent. The document is considered common if it is drafted in the interest of both parties, or evidences their mutual rights and obligations; or
- if the opponent relied on the document at any time of the proceedings.

There are no particular rules in the LCCP with respect to disallowing disclosure of a document. This is usually subject to specific rules or regulations with respect to disclosure of documents, such as bank secrecy laws, professional regulations (for example, attorney-client privilege is clearly set out in Law No. 8/70 regulating the legal profession), etc.

### **15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witness evidence is addressed in Articles 254 to 298 LCCP.

Most notably, witness evidence is not admissible for establishing (a) the existence of contracts and other legal acts (acts of will with the intention of creating legal effects) the value of which is in excess of LBP 500,000; and (b) contracts of an undetermined value (Article 254 LCCP).

Where permitted, witnesses provide verbal evidence, following the swearing of an oath of truth.

Some people may not act as witnesses: notably, certain

relatives may not act as witnesses in a litigation involving a family member (parents, grandparents, children, grandchildren, spouse (even after divorce)), an agent to their principal, a partner/shareholder in matters involving the company in which they are partners/shareholders (Article 260 LCCP).

The judge is in charge of the proper conduct of the proceedings. During the examination of witnesses, the judge plays an active role and is the one in charge of conducting the examination. There is no cross-examination *per se*; the opposing party may not address the witness directly. However, the opposing party may provide the judge a list of questions it wishes to ask the witness.

Depositions are not permitted in Lebanon.

### 16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is usually given in the context of court-appointed experts.

According to Article 313 LCCP, the court may designate an expert to submit technical advice or to undertake a technical investigation.

Nonetheless, depending on the circumstances of a case, there is nothing preventing a party from submitting expert reports/opinions, which would be treated as documentary evidence in the case.

### 17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Article 639 LCCP provides that all decisions, whether final or interim, issued by the Court of First Instance may be subject to appeal save for those that are excluded by the law. According to Article 640 LCCP, decisions in disputes under LBP 3 million cannot be appealed (except on limited grounds set out in Article 641 LCCP, such as lack of jurisdiction *ratione materiae*). However, the decisions issued by the Council of Arbitral Labour are not subject to appeal before the courts of appeal but only to a challenge by way of cassation (i.e. labour law disputes).

Unless otherwise provided by law, the timeframe to lodge an appeal (Article 643 LCCP) is as follows:

- eight days from receiving notification of a

decision issued by the judge of urgent matters, the President of the Enforcement Bureau, and all decisions ordering interim measures; and

- 30 days from receiving notification of the other types of decisions issued by the court of first instance.

Except when provided in a special text of law, the time limit to file an appeal starts running from the day of notification of the decision (Article 643 LCCP).

In addition, *ex parte* decisions and orders may be challenged by way of opposition before the judge/court who issued them (Article 601 LCCP).

### 18. What are the rules governing enforcement of foreign judgments?

Foreign judgments are recognised in Lebanon via an exequatur mechanism, which is an *ex parte* procedure. Article 1014 of the LCCP provides that exequatur is granted to a foreign judgment that satisfies the following conditions:

- The judgment should be rendered by judges who have jurisdiction under the laws of the country in which the decision was rendered, provided that such jurisdiction was not solely determined by the nationality of the plaintiff. In the event that two foreign judgments are rendered in two different jurisdictions but in relation to the same subject matter and among the same parties, the Enforcement Order is granted to the judgment issued by the judge who is designated as having jurisdiction under Lebanese rules pertaining to international jurisdiction.
- The judgment should be enforceable and should have acquired the force of *res judicata* in the country where it was rendered. Nevertheless, the Enforcement Order can be granted to provisional and *ex parte* decisions that have become enforceable in the concerned country.
- The party against whom enforcement is sought should have been duly notified of the lawsuit that resulted in the judgment and the right of defence was duly afforded to them.
- The judgment should be rendered in the name of a country which allows the enforcement of Lebanese judgments on its territories (after scrutinising them or after giving them an exequatur).
- The judgment should not violate public policy.

**19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

A party may request an order that the other party bear the costs of the litigation.

In principle, a judge would grant the successful party its request and order the losing party bears the costs of the successful party. The recoverable costs include the judicial fees, costs and expenses the successful party paid in order to file and plead its claim. In practice, lawyers' fees are not granted by the court.

**20. What, if any, are the collective redress (e.g. class action) mechanisms?**

There is no generally admitted mechanism for class actions in Lebanon. Interested parties may intervene or be joined to a lawsuit if the requirements are fulfilled (see below).

In labour disputes, there are special provisions in the Lebanese labour law governing collective labour contracts. A joint action by all employee parties to such a contract is possible in certain circumstances.

In insolvency/bankruptcy proceedings, all creditors can be joined into the proceeding.

**21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?**

The involvement of third parties in proceedings is regulated by Articles 36 *et seq* of the LCCP.

Pursuant to Article 36 LCCP, a third party can intervene in the trial proceedings and become a party upon the submission of a reasoned request before the court. The court shall rule on such request and authorise a third party to join a lawsuit.

In the same context, Article 38 LCCP provides that any party in the trial may request the joinder of a third party to hear the judgment, or to condemn it with respect to claims similar to those of one of the parties, or for warranty purpose. However, the failure to join a particular party does not preclude a litigant third party from bringing the same or similar claims against that party.

The intervening party or the party to be joined must have a personal and legitimate legal interest in the action (Article 40 LCCP).

**22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

The law does not address this issue. To the best of our knowledge, there have been no lawsuits in Lebanon involving third-party litigation funders.

**23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?**

The COVID-19 pandemic did not stop the operation of the courts which remained operational on an intermittent basis with a system of rotation between judges, court officers and employees. The courts remained operational regarding urgent requests in summary proceedings and criminal matters. Some courts also resorted to virtual hearing to ensure the continuity of the work.

Still, the parliament issued a series of laws suspending legal, judicial and contractual deadlines for various time periods between October 2019 and March 2021. Procedural delays naturally ensued.

**24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

One important advantage of litigating international commercial disputes in Lebanon is the possibility to provisionally seize/attach assets of the defendant even before (or without) a final judgment being issued in the plaintiff's favour. This grants the applicant a means of pressure which is not frequently available in the same circumstances elsewhere. In some circumstances, such a provisional seizure may be available *ex parte* on the basis of a probability of success in a main action on the merits. Such considerations may convince international litigants to consider Lebanon as a forum for their litigation, although it is even possible to obtain such seizure locally in support of foreign proceedings.

One important disadvantage in the currently prevailing circumstances is the delay that the proceedings may face due to domestic unrest. Delay is not a unique to Lebanon, but it may be augmented depending on the circumstances prevailing at the time of filing a claim.

## 25. What, in your opinion, is the most likely growth area for disputes for the next five years?

There will most likely be a growth in the area of disputes relating to commercial agency contracts.

Commercial agency contracts were for a long time subject to a special regime granting the Lebanese agent an exclusivity and a protection vis-à-vis the foreign principal or other agents in Lebanon (under Decree-Law No. 34 of 1967).

On 17 March 2022, a long-awaited competition law entered into force, notably providing that a clause of exclusive commercial representation shall not apply vis-à-vis third parties even if the agent declared it by registering it in the commercial register.

Although without retroactive effect, the new law is effective immediately and allows foreign companies, which previously had an exclusive distributor in Lebanon, to sell to third parties without incurring the risk of seeing their goods seized at the port upon entry into Lebanon.

This has already, and will continue, in our view, to affect litigation of these types of disputes before the Lebanese courts.

## 26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The proper integration of technology will require the intervention of the legislator, notably to amend the Lebanese Code of Civil Procedure, which does not reflect modern technology.

Nonetheless, even without an intervention of the legislator, technology may allow criminal courts to proceed with matters in circumstances where this would have otherwise not been possible without technology, such as to question and release a detainee who is sick. Also, with the consent of the parties, technology may be integrated into civil and commercial litigations, particularly in urgent matters, to speed up the litigation process.

In this context, we may note that a special law was enacted in 2018 (Law No. 81 dated 10/10/2018) to govern electronic transactions and personal data, notably providing that electronic documents and signatures have the same legal effects and probative value as paper documents and manuscript signatures.

## 27. What, if any, will be the long-term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

The COVID-19 pandemic may encourage the legislator to amend certain statutory provisions to allow for the integration of technology into the litigation process.

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